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SUBCHAPTER A—GENERAL

PART 1501—GENERAL

Sec.

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Subpart 1501.1—Purpose, Authority, Issuance

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1501.603-1 General.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8835, Mar. 8, 1984, unless otherwise noted.

1501.000 Scope of part.

The Federal Acquisition Regulation System brings together, in title 48 of the Code of Federal Regulations, the acquisition regulations applicable to all executive agencies of the Government. This part establishes a system of Environmental Protection Agency (EPA) acquisition regulations, referred to as the EPAAR, for the codification and publication of policies and procedures of EPA which implement and supplement the Federal Acquisition Regulation (FAR).

Subpart 1501.1—Purpose, Authority, Issuance

1501.101 Purpose.

This subpart establishes Chapter 15, the Environmental Protection Agency Acquisition Regulation (EPAAR), within Title 48, the Federal Acquisition Regulations System.

[60 FR 38505, July 27, 1995]

1501.104 Applicability.

The FAR (48 CFR chapter 1) and the EPAAR (48 CFR chapter 15) apply to all EPA acquisitions as defined in part 2 of the FAR, except where expressly excluded.

[62 FR 33572, June 20, 1997]

1501.105 Issuance.

1501.105-1 Publication and code arrangement.

The EPAAR will be published in: (a) The FEDERAL REGISTER, (b) cumulated form in the Code of Federal Regulations (CFR), and (c) a separate loose-leaf form in a distinctive light blue color.

[49 FR 8835, Mar. 8, 1984. Redesignated at 62 FR 33572, June 20, 1997]

1501.105-2 Arrangement of regulations.

(a) *References and citations.* This regulation may be referred to as the Environmental Protection Agency Acquisition Regulation or the EPAAR. References to EPAAR materials shall be made in a manner similar to that prescribed by FAR 1.105-2(c).

[49 FR 8835, Mar. 8, 1984. Redesignated and amended at 62 FR 33572, June 20, 1997]

1501.105-3 Copies.

Copies of the EPAAR in FEDERAL REGISTER and CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402. Copies of loose-leaf EPAAR are distributed within EPA and may be obtained from

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the EPA Facilities and Support Services Division.

[49 FR 8835, Mar. 8, 1984. Redesignated at 62 FR 33572, June 20, 1997]

Subpart 1503.3—Agency Acquisition Regulations

1501.301 Policy.

The EPAAR is prescribed by the Director, Office of Acquisition Management.

[49 FR 8835, Mar. 8, 1984, as amended at 59 FR 18976, Apr. 21, 1994]

§ 1501.370 OMB approvals under the Paperwork Reduction Act.

The information collection activities contained in the EPAAR sections listed below have been approved by the Office of Management and Budget (OMB) and have been issued OMB numbers in accordance with section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

48 CFR citation	OMB control No.
Specification, Standards and other Purchase Descriptions	
1510.011–70 through 1510.011–72	2030–0005
1510.011–80 through 1510.011–81	2030–0023
Contract delivery or performance 1512.104	2030–0023
Small Purchase and Other Simplified Purchase Procedures	
1513.505 through 1513.570	2030–0007
Contract Financing	
1532.170(a)	2030–0016
Solicitation Provisions and Contract Clauses	
1552.209–71	2030–0023
1552.209–73 through 1552.209–74	2030–0023
1552.210–72	2030–0005
1552.210–80	2030–0023
1552.212–71	2030–0023
1552.215–72 through 1552.215–76	2030–0006
1552.227–76	2030–0023

[59 FR 18619, Apr. 19, 1994, as amended at 59 FR 32134, June 22, 1994; 61 FR 29316, June 10, 1996]

Subpart 1501.4—Deviations

1501.401 Definition.

A deviation to the EPAAR is defined in the same manner as a deviation to the FAR (see FAR 1.401).

[49 FR 8835, Mar. 9, 1984; 49 FR 24734, June 15, 1984]

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1501.403 Individual deviations.

Requests for individual deviations from the FAR and the EPAAR shall be submitted to the Head of the Contracting Activity (HCA) for approval. Requests submitted shall cite the specific part of the FAR or EPAAR from which it is desired to deviate, shall set forth the nature of the deviation(s), and shall give the reasons for the action requested.

[65 FR 37291, June 14, 2000]

Subpart 1501.6—Contracting Authority and Responsibilities

1501.602–3 Ratification of unauthorized commitments.

(a) *Applicability.* The provisions of this section apply to all unauthorized commitments, whether oral or written and without regard to dollar value. Examples of unauthorized commitments are;

(1) Ordering supplies or services by an individual without contracting authority;

(2) Unauthorized direction of work through assignment of orders or tasks;

(3) Unauthorized addition of new work;

(4) Unauthorized direction of contractors to subcontract with particular firms; or

(5) Any other unauthorized direction which changed the terms and conditions of the contract.

(b) *Ratification Approval.* The Chief of the Contracting Office (CCO) is delegated authority to be the ratifying official. In order to act as the ratifying official, a CCO or an acting CCO must have delegated contracting officer authority. A CCO or acting CCO cannot approve a ratification if he/she acted as the contracting officer in preparing the determination and findings required under paragraph (c)(3) of this section.

(c) *Procedures.* (1) The program office shall notify the cognizant contracting office by memorandum of the circumstances surrounding an unauthorized commitment. The notification shall include:

(i) All relevant documents and records;

(ii) Documentation of the necessity for the work and benefit derived by the Government;

(iii) A statement of the delivery status of the supplies or services associated with the unauthorized commitment;

(iv) A list of the procurement sources solicited (if any) and the rationale for the source selected;

(v) If only one source was solicited, a justification for other than full and open competition (JOFOC) as required by FAR 6.302, FAR 6.303, and 1506.303, or for simplified acquisition procedures exceeding the competition threshold in FAR 13.106, a sole source justification as required by 1513.170;

(vi) A statement of steps taken or proposed to prevent reoccurrence of any unauthorized commitment.

(2) The Division Director (or equivalent) of the responsible office shall approve the memorandum. If expenditure of funds is involved, the program office shall include a Procurement Request/Order, EPA Form 1900-8, with funding sufficient to cover the action. The appropriation data cited on the 1900-8 shall be valid for the period in which the unauthorized commitment was made.

(3) Upon receiving the notification, the Contracting Officer shall prepare a determination and findings regarding ratification of the unauthorized commitment for the ratifying official. The determination and findings shall include sufficient detail to support the recommended action. If ratification of the unauthorized commitment is recommended, the determination and findings shall include a determination that the price is fair and reasonable. To document the determination, additional information may be required from the Contractor. Concurrence by the Office of General Counsel is not mandatory, but shall be sought in difficult or unusual cases.

(4) The ratifying official may inform the Inspector General (IG) of the action by memorandum through the Head of the Contracting Activity (HCA). For ratification actions exceeding the small purchase limitation, the ratifying official shall submit a memorandum to the Assistant Administrator

for Administration and Resources Management through the HCA for transmittal to the Assistant, Associate, or Regional Administrator (or equivalent level) of the person responsible for the unauthorized commitment. This memorandum should contain a brief description of the circumstances surrounding the unauthorized commitment, recommend corrective action, and include a copy of any memorandum sent to the IG. Submission of a memorandum to the appropriate Assistant, Associate, or Regional Administrator for unauthorized commitments at or below the small purchase limitation is optional and may be accomplished at the discretion of the ratifying official.

(d) *Paid Advertisements.* (1) EPA is generally not authorized to ratify improperly ordered paid advertisements. The ratifying official, however, may determine payment is proper subject to the limitations in FAR 1.602-3(c) if the individual responsible for the unauthorized commitment acted in good faith to comply with Agency acquisition policies and procedures.

(2) The paying office shall forward invoice claims received in its office for improper paid advertisements to the cognizant ratifying official for a determination regarding ratification of the action.

(3) If the ratifying official determines that an unauthorized commitment cannot be ratified by the Agency, the ratifying official shall instruct the submitter to present its claim to the General Accounting Office in accordance with the instructions contained in 4 CFR part 31, Claims Against the United States, General Procedures.

(e) *Payment of Properly Ratified Claims.* After the unauthorized commitment is ratified, the Contractor must submit an invoice (or resubmit an invoice if one was previously submitted) citing the appropriate contract or purchase order number.

[55 FR 18340, May 2, 1990, as amended at 59 FR 18976, Apr. 21, 1994; 60 FR 38505, July 27, 1995; 61 FR 57337, Nov. 6, 1996; 62 FR 33572, June 20, 1997; 65 FR 37291, June 14, 2000]

1501.603

1501.603 Selection, appointment, and termination of appointment.

1501.603-1 General.

EPA Contracting Officers shall be selected and appointed and their appointments terminated in accordance with the Contracting Officer warrant program specified in chapter 8 of the EPA "Contracts Management Manual."

PART 1502—DEFINITION OF WORDS AND TERMS

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Subpart 1502.1—Definitions

1502.100 Definitions.

Chief of the Contracting Office (CCO) means the Office of Acquisition Management Division Directors at Headquarters, Research Triangle Park and Cincinnati.

Head of the Contracting Activity (HCA) means the Director, Office of Acquisition Management.

Legal Counsel means those attorneys assigned to the Contracts Law Branch and the Research Triangle Park General Counsel Branch, Office of the General Counsel and designated by the Assistant General Counsel as Contract Law Specialists.

Procurement Executive (PE) means the Director, Office of Acquisition Management.

[59 FR 18977, Apr. 21, 1994]

PART 1503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Sec.

1503.000 Scope of part.

Subpart 1503.1—Safeguards

1503.101-370 Personal conflicts of interest.

1503.104-5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

Subpart 1503.2—Contractor Gratuities to Government Personnel [Reserved]

Subpart 1503.3—Reports of Suspected Antitrust Violations [Reserved]

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Subpart 1503.4—Contingent Fees

1503.408 Evaluation of the SF 119.

Subpart 1503.5—Contractor Responsibility to Avoid Improper Business Practices

1503.500-70 Policy.

1503.500-71 Procedures.

1503.500-72 Contract clause.

Subpart 1503.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1503.600-70 Scope of subpart.

1503.600-71 Definitions.

1503.601 Policy.

1503.602 Exceptions.

1503.670 Solicitation disclosure provision.

Subpart 1503.9—Whistle Blower Protections for Contractor Employees

1503.905 Procedures for investigating complaints.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8837, Mar. 8, 1984, unless otherwise noted.

1503.000 Scope of part.

This part implements FAR part 3, cites EPA regulations on employee responsibilities and conduct, establishes responsibility for reporting violations and related actions, and provides for authorization of exceptions to policy.

Subpart 1503.1—Safeguards

SOURCE: 64 FR 47410, Aug. 31, 1999, unless otherwise noted.

1503.101-370 Personal conflicts of interest.

(a) Each EPA employee (including special employees) engaged in source evaluation and selection is required to be familiar with the provisions of 40 CFR part 3 regarding personal conflicts of interest. The employee shall inform the Source Selection Authority (SSA) in writing if his/her participation in the source evaluation and selection process could be interpreted as a possible or apparent conflict of interest. The SSA will consult with appropriate Agency officials prior to the SSA's determination. The SSA shall relieve any EPA employee who has a conflict of interest of further duties in connection

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with the evaluation and selection process.

(b) Each EPA employee (including special employees, as defined by 1503.600-71(b)) involved in source evaluation and selection is required to comply with the Office of Government Ethics ethics provisions at 5 CFR part 2635.

1503.104-5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a)(1) The Chief of the Contracting Office (CCO) is the designated official to make the decision whether support contractors are used in proposal evaluation (as authorized at FAR 15.305(c) and as restricted at FAR 37.203(d)).

(2) The following written certification and agreement shall be obtained from the non-Government evaluator prior to the release of any proposal to that evaluator:

“CERTIFICATION ON THE USE AND DISCLOSURE OF PROPOSALS”

RFP #:

Offeror:

1. I hereby certify that to the best of my knowledge and belief, no conflict of interest exists that may diminish my capacity to perform an impartial, technically sound, objective review of this proposal(s) or otherwise result in a biased opinion or unfair competitive advantage.

2. I agree to use any proposal information only for evaluation purposes. I agree not to copy any information from the proposal(s), to use my best effort to safeguard such information physically, and not to disclose the contents of nor release any information relating to the proposal(s) to anyone outside of the evaluation team assembled for this acquisition or individuals designated by the contracting officer.

3. I agree to return to the Government all copies of proposals, as well as any abstracts, upon completion of the evaluation.

Name and Organization)

(Date of Execution)

(End of Certificate)

(b) Information contained in proposals will be protected and disclosed to the extent permitted by law, and in accordance with FAR 3.104-5, 15.207,

and Agency procedures at 40 CFR part 2.

Subpart 1503.2—Contractor Gratuities to Government Personnel [Reserved]

Subpart 1503.3—Reports of Suspected Antitrust Violations [Reserved]

Subpart 1503.4—Contingent Fees

1503.408 Evaluation of the SF 119.

Subpart 1503.5—Contractor Responsibility to Avoid Improper Business Practices

SOURCE: 65 FR 57103, Sept. 21, 2000, unless otherwise noted.

EFFECTIVE DATE NOTE: At 65 FR 57103, Sept. 21, 2000, subpart 1503.5 was added, effective Nov. 20, 2000.

1503.500-70 Policy.

Government contractors must conduct themselves with the highest degree of integrity and honesty. Contractors should have standards of conduct and internal control systems that:

(a) Are suitable to the size of the company and the extent of their involvement in Government contracting.

(b) Promote such standards.

(c) Facilitate timely discovery and disclosure of improper conduct in connection with Government contracts, and

(d) Ensure corrective measures are promptly instituted and carried out.

1503.500-71 Procedures.

(a) A contractor's system of management controls should provide for:

(1) A written code of business ethics and conduct and an ethics training program for all employees;

(2) Periodic reviews of company business practices, procedures, policies and internal controls for compliance with standards of conduct and the special requirements of Government contracting;

(3) A mechanism, such as a hotline, by which employees may support suspected instances of improper conduct,

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and instructions that encourage employees to make such reports;

(4) Internal and/or external audits, as appropriate.

(5) Disciplinary action for improper conduct;

(6) Timely reporting to appropriate Government officials of any suspected or possible violation of law in connection with Government contracts or any other irregularities in connection with such contracts; and

(7) Full cooperation with any Government agencies responsible for either investigation or corrective actions.

(b) Contractors who are awarded an EPA contract of \$1 million or more must display EPA Office of Inspector General Hotline Posters unless the contractor has established an internal reporting mechanism and program, as described in paragraph (a) of this section.

1503.500-72 Contract clause.

As required by EPAAR 1503.500-71(b), the contracting officer shall insert the clause at 1552.203-71, Display of EPA Office of Inspector General Hotline Poster, in all contracts valued at \$1,000,000 or more, including all contract options.

Subpart 1503.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

1503.600-70 Scope of subpart.

This subpart implements and supplements FAR subpart 3.6 and sets forth EPA policy and procedures for identifying and dealing with conflicts of interest and improper influence or favoritism in connection with contracts involving current or former EPA employees. This subpart does not apply to agreements with other departments or agencies of the Federal Government, nor to contracts awarded to State or local units of Government.

1503.600-71 Definitions.

(a) *Regular employee* means any officer or employee of EPA who is employed or appointed, with or without compensation, to serve more than 130 days during any period of 365 consecutive days, including regular officers of

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the Public Health Service Commissioned Corps and reserve officers of the Public Health Service Commissioned Corps while on active duty.

(b) *Special employee* means an officer or employee of EPA who is retained, designated, appointed or employed to perform, with or without compensation, temporary duties either on a full-time or intermittent basis for not more than 130 days during any period of 365 consecutive days and who actually served more than 60 days during such 365-day period.

1503.601 Policy.

(a) No contract may be awarded without competition to a former regular or special EPA employee (or to a business concern or other organization owned or substantially owned or controlled by a former employee) whose employment terminated within 365 calendar days before submission of a proposal to EPA.

(b) No contract shall be awarded without competition to a firm which employs, or proposes to employ, a current regular or special EPA employee or a former EPA regular or special employee whose employment terminated within 365 calendar days before submission of a proposal to EPA, if either of the following conditions exists:

(1) The current or former EPA regular or special employee is or was involved in development or negotiating the proposal for the prospective contractor.

(2) The current or former EPA regular or special employee will be involved directly or indirectly in the management, administration, or performance of the contract.

1503.602 Exceptions.

The Assistant Administrator for Administration and Resources Management may authorize an exception, in writing, to the policy in FAR 3.601 and 1503.601 for the reasons stated in FAR 3.602, if the exception would not involve a violation of 18 U.S.C. 203, 18 U.S.C. 205, 18 U.S.C. 207, 18 U.S.C. 208, or EPA regulations at 40 CFR part 3.

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The Assistant Administrator shall consult with the Designated Agency Ethics Official before authorizing any exceptions.

[60 FR 38505, July 27, 1995]

1503.670 Solicitation of disclosure provision.

The Contracting Officer shall insert the provision at 1552.203-70, Current/Former Agency Employee Involvement Certification, in all solicitations for sole source acquisitions.

[50 FR 14357, Apr. 11, 1985]

Subpart 1503.9—Whistle Blower Protections for Contractor Employees

1503.905 Procedures for investigating complaints.

The Assistant Administrator for Administration and Resources Management is designated as the recipient of the written report of findings by the Inspector General. The Assistant Administrator shall ensure that the report of findings is disseminated in accordance with FAR 3.905(c).

[61 FR 57337, Nov. 6, 1996]

PART 1504—ADMINISTRATIVE MATTERS

Subpart 1504.8—Contract Files

Sec.

1504.804 Closeout of contract files.

1504.804-5 Detailed procedures for closing out contract files.

1504.804-5

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 28246, July 11, 1984, unless otherwise noted.

Subpart 1504.8—Contract Files

1504.804 Closeout of contract files.

1504.804-5 Detailed procedures for closing out contract files.

In addition to those procedures set forth in FAR 4.804-5, the contracting office shall, before final payment is made under a cost reimbursement type contract, verify the allowability, allocability, and reasonableness of costs claimed. Verification of total costs incurred should be obtained from the Office of Audit through the cost advisory group at the contracting office in the form of a final audit report. Similar verification of actual costs shall be made for other contracts when cost incentives, price redeterminations, or cost-reimbursement elements are involved. Termination settlement proposals shall be submitted to the cost advisory group at the contracting office for review by the Office of Audit as prescribed by FAR 49.107. All such audits will be coordinated through the cost advisory group in the contracting office. Exceptions to these procedures are the quick close-out procedures as described in FAR 42.708 and Unit 2 of the EPA Acquisition Handbook.

[49 FR 28246, July 11, 1984, as amended at 63 FR 46899, Sept. 3, 1998]

SUBCHAPTER B—ACQUISITION PLANNING

PART 1505—PUBLICIZING CONTRACT ACTIONS

Sec.

1505.000 Scope of part.

Subpart 1505.2—Synopsis of Proposed Contract Actions

1505.202 Exceptions.

1505.203 Publicizing and response time.

1505.271 [Reserved]

Subpart 1505.5—Paid Advertisement [Reserved]

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8838, Mar. 8, 1984, unless otherwise noted.

1505.000 Scope of part.

This part provides instructions on publicizing contract opportunities and response time, instructions on information to include in the synopses of proposed contracts, instructions on publicizing orders under GSA schedule contracts, policy references relative to release of information, and procedures for obtaining information on previous Government contracts.

[50 FR 14357, Apr. 11, 1985]

Subpart 1505.2—Synopsis of Proposed Contract Actions

1505.202 Exceptions.

The Contracting Officer need not submit the notice required by FAR 5.201 when the Contracting Officer determines in writing that the contract is for the services of experts for use in preparing or prosecuting a civil or criminal action under the Superfund Amendments and Reauthorization Act of 1986.

[60 FR 38505, July 27, 1995]

1505.203 Publicizing and response time.

(a) The Contracting Officer may, at his/her discretion under certain circumstances, elect to transmit a syn-

opsis to the Commerce Business Daily (CBD) of a proposed contract action that falls within an exception to the synopsis requirement in FAR 5.202(a). For those contract actions, the Contracting Officer may provide for a lesser time period than the 15 days required by FAR 5.203(a) and the 30 days required by FAR 5.203 (c) or (d), and the 45 days required by FAR 5.203(e). The Contracting Officer must identify the basis for the lesser time periods for response in the synopsis.

(b) The authority for paragraph (a) does not extend to the synopsis of contract actions falling within the exception in FAR 5.202(a)(7), if to do so would disclose the originality of thought or innovativeness of the proposed research.

[50 FR 14357, Apr. 11, 1985, as amended at 62 FR 33572, June 20, 1997]

1505.271 [Reserved]

Subpart 1505.5—Paid Advertisement [Reserved]

PART 1506—COMPETITION REQUIREMENTS

Sec.

1506.000 Scope of part.

Subpart 1506.2—Full and Open Competition After Exclusion of Sources [Reserved]

Subpart 1506.3—Other Than Full and Open Competition

1506.302-5 Authorized or required by statute.
1506.303-2 Content.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 50 FR 14357, Apr. 11, 1985, unless otherwise noted.

1506.000 Scope of part.

This part implements FAR part 6. It prescribes the Environmental Protection Agency policies and procedures in

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obtaining full and open competition in the acquisition process.

Subpart 1506.2—Full and Open Competition After Exclusion of Sources [Reserved]

Subpart 1506.3—Other Than Full and Open Competition

1506.302-5 Authorized or required by statute.

(a) *Authority.* Section 109(e) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) is cited as authority.

(b) *Application.* (1) The contracting officer may use other than full and open competition to acquire the services of experts for use in preparing or prosecuting a civil or criminal action under SARA whether or not the expert is expected to testify at trial. The contracting officer need not prepare the written justification under FAR 6.303 when acquiring expert services under the authority of section 109(e) of SARA. The contracting officer shall document the official contract file when using this authority.

(2) The contracting officer shall give notice to the Agency's Competition Advocate whenever a contract award is made using other than full and open competition under this authority. The notice shall contain a copy of the contract and the summary of negotiations.

[53 FR 31872, Aug. 22, 1988]

1506.303-2 Content.

The documentation requirements in this section apply only to acquisitions processed using other than small purchase procedures. (Refer to 1513.170 for documentation for small purchase acquisitions).

(a) The initiating office shall prepare a written justification for other than full and open competition (JOFOC) that documents the facts and circumstances substantiating the infeasibility of full and open competition for each recommended limited sources or sole source acquisition when required by FAR 6.302.

(b) The recommendation shall be entitled "Justification for Other Than

Full and Open Competition" and shall be signed at the programmatic Division Director or comparable office level prior to submission with the procurement request. The JOFOC shall contain the information prescribed in FAR 6.303-2 (a) and (b).

(c) If unusual and compelling urgency (see FAR 6.303-2) is a basis for the JOFOC, then the following applies. Explain the circumstances that led to the need for an urgent contractual action. Explain why the requirement could not have been processed in sufficient time to permit full and open competition. It should be noted that the existence of legislation, court order, or Presidential mandate is not, of itself, a sufficient basis for a JOFOC. However, the circumstances necessitating legislation, court order, or Presidential mandate may justify contractual action on an other than full and open competition basis.

(d) If the proposed acquisition has been synopsized in accordance with the applicable requirements in FAR subpart 5.2, the Contracting Officer must incorporate the evaluation of responses to the synopsis in the JOFOC. (See 1506.371(d) for contents of the evaluation document).

[50 FR 14357, Apr. 11, 1985; 50 FR 15425, Apr. 18, 1985]

PART 1508—REQUIRED SOURCES OF SUPPLY

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Subpart 1508.8—Acquisition of Printing and Related Supplies

1508.870 Contract clause.

Contracting Officers shall insert the contract clause at 1552.208-70, Printing, in all contracts which require printing, duplication, binding, reproduction, and related services and are subject to the provisions of the Government Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States.

[49 FR 8838, Mar. 8, 1984]

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**PART 1509—CONTRACTOR
QUALIFICATIONS**

**Subpart 1509.1—Responsible
Prospective Contractors**

Sec.

1509.000 Scope of part.

1509.105 Procedures.

**Subpart 1509.1—Responsible Prospective
Contractors**

**Subpart 1509.170—Contractor
Performance Evaluations**

1509.105 Procedures.

1509.170-1 Scope of subpart.

**Subpart 1509.170—Contractor
Performance Evaluations**

This subpart establishes EPA policy and procedures for evaluation of contractor performance. Contracting officers shall insert the contract clause at 1552.209-76 in all solicitations and contracts with an estimated dollar value in excess of \$100,000. For acquisitions involving options, the total estimated value of the acquisition shall include the estimated base amount plus the option(s) amount(s).

- 1509.170-1 Scope of subpart.
- 1509.170-2 Purpose.
- 1509.170-3 Applicability.
- 1509.170-4 Definitions.
- 1509.170-5 Policy.
- 1509.170-6 Filing of forms.
- 1509.170-7 Release of ratings.
- 1509.170-8 Contractor Performance Report.

[49 FR 8839, Mar. 8, 1984, as amended at 64 FR 20202, Apr. 26, 1999]

**Subpart 1509.4—Debarment, Suspension
and Ineligibility**

1509.170-2 Purpose.

- 1509.403 Definitions.
- 1509.406 Debarment.
- 1509.406-3 Procedures.
- 1509.407 Suspension.
- 1509.407-3 Procedures.

This subpart provides guidance to program and contracting personnel regarding the evaluation of contractor performance. It establishes a uniform method for determining and recording the effectiveness of contractors in meeting contractual obligations. Additionally, this subpart details a systematic approach for identifying and maintaining records of contractors' performance histories.

[64 FR 20203, Apr. 26, 1999]

**Subpart 1509.5—Organizational Conflicts of
Interest**

1509.170-3 Applicability.

- 1509.500 Scope of subpart.
- 1509.502 Applicability.
- 1509.503 Waiver.
- 1509.505-4 Obtaining access to proprietary information.
- 1509.505-70 Information sources.
- 1509.507-1 Solicitation provisions.
- 1509.507-2 Contract clause.

(a) This subpart applies to all EPA acquisitions in excess of \$100,000, except for construction acquisitions, architect-engineer acquisitions, acquisitions awarded under the Federal Acquisition Regulation (FAR) Subpart 8.6, Acquisitions from Federal Prison Industries, Incorporated, FAR Subpart 8.7, Acquisitions from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled, and FAR 13.5, Test Program for Certain Commercial Items. FAR 36.201 and 36.604 provide detailed instructions for construction

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8839, Mar. 8, 1984, unless otherwise noted.

1509.000 Scope of part.

This part implements FAR part 9 and provides policy and procedures pertaining to contractor's responsibility; debarment, suspension, and ineligibility; and organizational conflicts of interest.

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and architect-engineer contractor performance evaluations.

(b) The acquisition of commercial items in accordance with FAR 13.106 is not applicable to this subpart because simplified acquisition procedures do not require the creation or existence of a formal database for past performance evaluations. In cases where simplified acquisition procedures are not used to acquire commercial items (see FAR 12.203), this subpart is applicable to acquiring commercial items in excess of \$100,000.

(c) EPA Form 1900-26, Contracting Officer's Evaluation of Contractor Performance, and EPA Form 1900-27, Project Officer's Evaluation of Contractor Performance, shall apply to all performance evaluations completed prior to the effective date of this subpart. However, on the effective date of this rule, EPA Forms 1900-26 and 1900-27 are obsolete, and contracting officers shall complete all contractor performance evaluations by use of the National Institutes of Health's Contractor Performance System.

[64 FR 20203, Apr. 26, 1999]

1509.170-4 Definitions.

(a) *Contractor Performance Report* is an evaluation of a contractor's performance for a specified period of time.

(b) *Interim Report* refers to a Contractor Performance Report that covers each 12 month period after the effective date of contract.

(c) *Final Report* refers to a Contractor Performance Report that covers the last 12 months (or less) of contract performance.

(d) *Ratings* refer to the numerical scores for each performance category. Ratings are defined as follows: 0 = unsatisfactory, 1 = poor, 2 = fair, 3 = good, 4 = excellent, and 5 = outstanding.

(e) *Summary ratings* refer to the ratings determined by one level above the contracting officer regarding disagreements between the contractor and the contracting officer. Summary ratings reflect the Agency's ultimate conclusion for the performance period being evaluated.

(f) *Performance Categories* refer to the measures used to evaluate a contractor's performance. Performance categories are defined as quality, cost con-

trol, timeliness of performance, and business relations.

[64 FR 20203, Apr. 26, 1999, as amended at 64 FR 41043, July 29, 1999]

1509.170-5 Policy.

(a) Contracting officers are responsible for the timely completion of contractors' performance evaluations. The National Institutes of Health Contractor Performance System shall be used to record individual contractor performance histories on EPA contracts and to obtain contractor past performance information for use in EPA's source selection process.

(b) Contracting officers are required to use the National Institutes of Health Contractor Performance System to record evaluations for all contract performance periods expiring after the effective date of this subpart.

(c) Contractor evaluation information shall be recorded in Contractor Performance Reports (Report) which are generated by the National Institutes of Health system. Reports shall cover individual contractor evaluations at the contract level, which includes all work assignments, task orders, or delivery orders associated with the 12 month period being evaluated (interim Report) or the last 12 months (or less) of contract performance (final Report).

(d) The contracting officer must complete interim Reports covering each 12 month period after the effective date of contract for all contracts in excess of \$100,000, except those acquisitions identified in 1509.170-3, Applicability. In addition to interim Reports, the contracting officer must complete a final Report which covers the last 12 months (or less) of contract performance.

(e) The contracting officer shall initiate the process for completing interim Reports within five (5) business days after the end of each 12 months of contract performance. The contracting officer shall initiate the process for completing a final Report within five (5) business days after the end of the last 12 months (or less) of contract performance. Final Reports must be completed prior to contract closeout.

(f) The contracting officer must complete interim and final Reports, including the project officer's evaluation of

contractor performance, receipt of any contractor input, and resolution of summary ratings (if any) within 90 business days from the date the contracting officer initiates the evaluation.

(g) Reports shall be used to inform other agencies and departments (upon request) about a contractor's performance on an EPA contract, and to assist the contracting officer and the Technical Evaluation Panel with evaluating past performance for future EPA acquisitions.

(h) When evaluating proposals, contracting officers shall use the National Institutes of Health system to access Reports from other agencies or departments that are available in the National Institutes of Health database. Contracting Officers may need to access past performance information from other than the National Institutes of Health system if the National Institutes of Health system does not include applicable information.

(i) In accordance with FAR 42.1503(b), the ultimate conclusion on the performance evaluation is the decision of the Agency. The contracting officer must ensure the accuracy of ratings for each performance category by verifying that information in the contract file corresponds with the project officer's designated ratings. A contractor's performance evaluation should closely parallel award fee determinations made under the contract.

(j) In cases of novations involving successors-in-interest, a final evaluation of the predecessor contractor must be completed within five (5) business days after the end of the predecessor contractor's performance, and an interim evaluation of the successor contractor must be completed within five (5) business days after the end of each 12 months of contract performance after the successor began performing. In cases of change-of-name agreements, the system shall be changed to reflect the new contractor's name.

(k) Contracting officers must inform the Office of Debarment and Suspension of any repetitive unsatisfactory or poor (a score of 0 or 1) ratings encountered by the contractor.

[64 FR 20203, Apr. 26, 1999, as amended at 64 FR 41043, July 29, 1999]

1509.170-6 Filing of forms.

The original copy of completed Contractor Performance Reports (interim and final) shall be filed in each individual contractor's official contract file. The National Institutes of Health Contractor Performance System will retain all reports for three (3) years after contract completion.

[64 FR 20204, Apr. 26, 1999]

1509.170-7 Release of ratings.

(a) Agencies and departments who subscribe to the National Institutes of Health's Contractor Performance System will have direct access to all Reports, including those of EPA, in the National Institutes of Health's database. Information on EPA contractors' performance ratings may also be obtained by contacting the EPA contracting officer responsible for the evaluation.

(b) Contractors' performance ratings may be released to other Federal, State, and local Governments upon written request. The release to other Federal, State, and local Governments must stipulate that the information provided shall not be released outside of the requesting Government agency. In cases where the Federal agency is part of the National Institutes of Health Contract Performance System, a written request is not applicable.

(c) Freedom of Information Act requests shall be processed by the EPA Freedom of Information Act office where the contract is located. Requests for past performance evaluations during the period the information may be used to provide source selection information shall be rejected if the requests are made by other than the Government personnel and the contractor whose performance is being evaluated.

[64 FR 20204, Apr. 26, 1999]

1509.170-8 Contractor Performance Report.

(a) Contractor Performance Reports (interim and final) must be prepared electronically by use of the National Institutes of Health's Contractor Performance System. Hard copy preparation of Reports shall not be used unless specifically instructed by the National

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Institutes of Health. The National Institutes of Health will provide EPA's Office of Acquisition Management Internal Oversight Service Center with specific instructions if hard copy use becomes necessary.

(b) A copy of the National Institutes of Health Contractor Performance Report (including instructions) shall be included in each solicitation and contract with an estimated value in excess of \$100,000.

[64 FR 20204, Apr. 26, 1999]

Subpart 1509.4—Debarment, Suspension and Ineligibility

SOURCE: 65 FR 37291, June 14, 2000, unless otherwise noted.

1509.403 Definitions.

The "Debarring Official" and the "Suspending Official" as defined in FAR 9.403 is a designated individual located in the Office of Grants and Debarment. This Agency official is authorized to make the determinations and provide the notifications required under FAR subpart 9.4 or this subpart, except for the determinations required by FAR 9.405-1(a) which are to be made by the Head of the Contracting Activity. All compelling reason determinations to be made by the Debarring or Suspending Official under FAR subpart 9.4 or this subpart will be made only after coordination and consultation with the Head of the Contracting Activity. See also 40 CFR part 32.

1509.406 Debarment.

1509.406-3 Procedures.

(a) *Investigation and referral*—(1) Contracting officer responsibility. (i) When contracting personnel discover information which indicates that a cause for debarment may exist, they shall promptly report such information to the cognizant Chief of the Contracting Office (CCO). Purchasing agents in simplified acquisition activities which do not come under the direct cognizance of a CCO shall report such information by memorandum, through their immediate supervisor, and addressed to the cognizant CCO responsible for their office's contract acquisitions.

(ii) Contracting officers shall review "The List of Parties Excluded from Federal Procurement and Nonprocurement Programs" to ensure that the Agency does not solicit offers from, award contracts to, or consent to subcontracts with listed contractors.

(2) *Chief of the Contracting Office responsibility*. When the Chief of the Contracting Office determines that sufficient information is available to indicate that a cause for debarment may exist, such information shall be promptly reported by memorandum to the HCA. The memorandum provides the Chief of the Contracting Office's assessment of the information, any investigative report or audit, and any additional information he/she has discovered.

(3) *HCA responsibility*. Upon receipt of a report of a suspected debarment situation, the HCA shall take the following actions:

(i) Notify the Director, Suspension and Debarment Division, that investigation of a potential debarment has been initiated.

(ii) Review the reported information.

(iii) Investigate as necessary to verify or develop additional information.

(iv) Refer the matter through the Suspension and Debarment Division to the Debarring Official for consideration of debarment; request that the Suspension and Debarment Division evaluate the information and, if appropriate, refer the matter to the Debarring Official for consideration of debarment; or recommend to the Suspension and Debarment Division that the matter be closed without further action because the facts do not warrant debarment.

(v) Obtain legal counsel's opinion on referrals or recommendations made to the Debarring Official.

(vi) Notify EPA Contracting Officers of those Contractors who are ineligible for solicitation, award, or subcontracting but who do not appear on the GSA Consolidated List; e.g., those who are ineligible based on a settlement reached by the Debarring Official under which the Contractor has agreed to

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voluntarily exclude itself from participation in Government contracting/subcontracting for a specified period or because of a Notice of Proposal to Debar.

(4) *Any official.* When information is discovered which may indicate potential criminal or civil fraud activity, such information must be referred promptly to the EPA Office of Inspector General.

(5) *Debarring Official's responsibility.* The Debarring Official shall:

(i) Review referrals from the HCA together with the HCA's recommendations, if any, and determine whether further consideration by the Debarring Official is warranted and take such actions as are required by FAR subpart 9.4;

(ii) Obtain the HCA's recommendation prior to reaching a voluntary exclusion settlement with a Contractor in lieu of debarment;

(iii) Promptly notify the HCA of Contractors with whom a settlement in lieu of debarment has been reached under which the Contractor voluntarily excludes itself from or restricts its participation in Government contracting/subcontracting for a specified period; and of Contractors who have received a Notice of Proposal to Debar.

(b) [Reserved]

1509.407 Suspension.

1509.407-3 Procedures.

The procedures prescribed in 1509.406-3(a) shall be followed under conditions which appear to warrant suspension of a Contractor.

Subpart 1509.5—Organizational Conflicts of Interests

1509.500 Scope of subpart.

This subpart establishes EPA policy and procedures for identifying, evaluating, and resolving organizational conflicts of interest. EPA's policy is to avoid, neutralize, or mitigate organizational conflicts of interest. If EPA is unable to neutralize or mitigate the effects of a potential conflict of interest, EPA will disqualify the prospective contractor or will terminate the con-

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tract when potential or actual conflicts are identified after award.

[49 FR 8839, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1509.502 Applicability.

This subpart applies to all EPA contracts except agreements with other Federal agencies. However, this subpart applies to contracts with the Small Business Administration (SBA) under the 8(a) program.

1509.503 Waiver.

The Head of the Contracting Activity may waive any general rule or procedure of this subpart by determining that its application in a particular situation would not be in the Government's interest. Any request for waiver must be in accordance with FAR 9.503. The Assistant General Counsel for Contracts and Information Law shall be consulted on such waiver requests.

[49 FR 8839, Mar. 8, 1984, as amended at 61 FR 29316, June 10, 1996]

1509.505-4 Obtaining access to proprietary information.

Contractors gaining access to confidential business information of other companies in performing advisory services for EPA shall comply with the special requirements of 40 CFR part 2 and the provisions of their contracts relating to the treatment of confidential business information.

1509.505-70 Information sources.

(a) *Disclosure.* Prospective EPA Contractors responding to solicitations or submitting unsolicited proposals shall provide information to the Contracting Officer for use in identifying, evaluating, or resolving potential organizational conflicts of interest. The submittal may be a certification or a disclosure, pursuant to paragraph (a) (1) or (2) of this section.

(1) If the prospective contractor is not aware of any information bearing on the existence of any organizational conflict of interest, it may so certify.

(2) Prospective contractors not certifying in accordance with paragraph (a)(1) of this section must provide a disclosure statement which describes concisely all relevant facts concerning any

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past, present, or planned interests relating to the work to be performed and bearing on whether they, including their chief executives, directors, or any proposed consultant or subcontractor, may have a potential organizational conflict of interest.

(b) *Failure to disclose information.* Any prospective contractor failing to provide full disclosure, certification, or other required information will not be eligible for award. Nondisclosure or misrepresentation of any relevant information may also result in disqualification from award, termination of the contract for default, or debarment from Government contracts, as well as other legal action or prosecution. In response to solicitations, EPA will consider any inadvertent failure to provide disclosure certification as a "minor informality" (as explained in FAR 14.405); however, the prospective contractor must correct the omission promptly.

(c) *Exception.* Where the Contractor has previously submitted a conflict of interest certification or disclosure for a contract, only an update of such statement is required when the contract is modified.

[49 FR 8839, Mar. 8, 1994. Redesignated at 59 FR 18619, Apr. 19, 1994]

1509.507-1 Solicitation provisions.

(a) *Advance notice of limitations.* The Contracting Officer shall alert prospective contractors by placing a notice in the solicitation whenever a particular acquisition might create an organizational conflict of interest. The notice will:

(1) Include the information prescribed in (FAR) 48 CFR 9.507-1;

(2) Refer prospective contractors to this subpart; and

(3) Require proposers to disclose relevant facts concerning any past, present, or currently planned interests relating to the work described in the solicitation.

(b) *Required solicitation provision.* The Contracting Officer shall include the provisions at 1552.209-70 and 1552.209-72 in all solicitations, except where the following applies:

(1) An Organizational Conflict of Interest provision is drafted for a par-

ticular acquisition (see Section 1509.507-1(a));

(2) When the procurement is with another Federal agency (however, the provision is included in solicitations issued under the Small Business Administration's (SBA) 8(a) program); and

(3) When the procurement is accomplished through simplified acquisition procedures, use of the provision is optional.

[49 FR 8839, Mar. 8, 1994. Redesignated and amended at 59 FR 18619, Apr. 19, 1994; 61 FR 57337, Nov. 6, 1996; 62 FR 33572, June 20, 1997]

1509.507-2 Contract clause.

(a) The Contracting Officer shall include the clause at 1552.209-71 in all contracts in excess of the simplified acquisition threshold and, as appropriate, in simplified acquisition procedures. Contracts for other than Superfund work shall include Alternate I in this clause in lieu of paragraph (e).

(b) The Contracting Officer shall include the clause at 1552.209-73 in all solicitations and contracts for Superfund work in excess of the simplified acquisition threshold and, as appropriate, in small purchases for Superfund work.

(c) The Contracting Officer shall include the clause at 1552.209-74 or its alternates in the following solicitations and contracts for Superfund work in excess of the simplified acquisition threshold and, as appropriate, in simplified acquisition procedures for Superfund work. The Contracting Officer shall include the clause at 1552.209-74 in all Alternative Remedial Contracting Strategy (ARCS) solicitations and contracts, except Site Specific solicitations and contracts. Alternate I shall be used in all Time Critical Rapid Response (TCRR) solicitations and contracts, except site specific solicitations and contracts. The term "TCRR" in the Limitation of Future Contracting clauses includes not only TCRR solicitations and contracts but Emergency Response Cleanup Services (ERCS) and other emergency type solicitations and contracts. TCRR pilot scale studies are included in the term "treatability studies". Alternate II shall be used in all Technical Assistance Team (TAT) solicitations and contracts. Alternate III shall be used in all Environmental

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Services Assistance Team (ESAT) solicitations and contracts. Alternate IV shall be used in all Technical Enforcement Support (TES) solicitations and contracts. Alternate V shall be used in all Superfund Headquarters Support solicitations and contracts. The Contracting Officer is authorized to modify paragraph (c) of Alternate V to reflect any unique limitations applicable to the program requirements. Alternate VI shall be used in all Site Specific solicitations and contracts.

(d) The Contracting Officer shall insert the clause at 1552.209-75 in Superfund solicitations and contracts in excess of the simplified acquisition threshold, where the solicitation or contract does not include (EPAAR) 48 CFR 1552.211-74, Work Assignments, Alternate I, or a similar clause requiring conflict of interest certifications during contract performance. This clause requires an annual conflict of interest certification from contractors when the contract does not require the submission of other conflict of interest certifications during contract performance. Contracts requiring annual certifications include: Site Specific contracts, the Contract Laboratory Program (CLP), and the Sample Management Office (SMO) contracts. The annual certification requires a contractor to certify that all organizational conflicts of interest have been reported, and that its personnel performing work under EPA contracts or relating to EPA contracts have been informed of their obligation to report personal and organizational conflicts of interest to the Contractor. The annual certification shall cover the one-year period from the date of contract award for the initial certification, and a one-year period starting from the previous certification for subsequent certifications. The certification must be received by the Contracting Officer no later than 45 days after the close of the certification period covered.

[59 FR 18619, Apr. 19, 1994, as amended at 61 FR 57337, Nov. 6, 1996]

PART 1511—DESCRIBING AGENCY NEEDS

Sec.
1511.000 Scope of part.

1511.011 Solicitation Provisions and Contract Clauses.
1511.011-70 Reports of work.
1511.011-71 [Reserved]
1511.011-72 Monthly progress report.
1511.011-73 Level of effort.
1511.011-74 Work assignments.
1511.011-75 Working files.
1511.011-76 Legal analysis.
1511.011-77 Final reports.
1511.011-78 Advisory and assistance services.
1511.011-79 Information resources management.

AUTHORITY: Sec. 205(c), 63 Sta. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 61 FR 57337, Nov. 6, 1996, unless otherwise noted.

1511.000 Scope of part.

This part implements FAR part 11 and provides policy and procedures for describing Agency needs.

1511.011 Solicitation Provisions and Contract Clauses.

1511.011-70 Reports of work.

Contracting officers shall insert one of the contract clauses at 1552.211-70 when the contract requires the delivery of reports, including plans, evaluations, studies, analyses and manuals. Alternate I should be used to specify reports in contract schedule, whereas the basic clause should be used when reports are specified in a contract attachment.

[63 FR 10549, Mar. 4, 1998]

1511.011-71 [Reserved]

1511.011-72 Monthly progress report.

Contracting Officers shall insert a contract clause substantially the same as the clause at 1552.211-72 when monthly progress reports are required.

1511.011-73 Level of effort.

The Contracting Officer shall insert the clause at 1552.211-73, Level of Effort, in term form contracts.

1511.011-74 Work assignments.

The Contracting Officer shall insert the contract clause at 1552.211-74, Work Assignments, in cost-reimbursement type term form contracts when work assignments are used. For Superfund contracts, except for contracts which

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require annual conflict of interest certificates (e.g., Site Specific contracts, the Contract Laboratory Program (CLP), and Sample Management Office (SMO) contracts), the Contracting Officer shall use the clause with either Alternate I or Alternate II. Alternate I shall be used for contractors who have at least 3 years of records that may be searched for certification purposes. Alternate II shall be used for contractors who do not have at least three years of records that may be searched.

1511.011-75 Working files.

Contracting Officers shall insert the contract clause at 1552.211-75 in all applicable EPA contracts where accurate working files on all work documentation is required in the performance of the contract.

1511.011-76 Legal analysis.

Contracting Officers shall insert the clause at 1552.211-76 when it is deter-

mined that the contract involves legal analysis.

1511.011-77 Final reports.

Contracting Officers shall insert the contract clause at 1552.211-77 when a contract requires both a draft and a final report.

1511.011-78 Advisory and assistance services.

Contracting Officers shall insert the contract clause at 1552.211-78 in all contracts for advisory and assistance services.

1511.011-79 Information resources management.

The Contracting Officer shall insert the clause at 1552.211-79, Compliance with EPA Policies for Information Resource Management, in all solicitations and contracts.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1513—SIMPLIFIED ACQUISITION PROCEDURES

Sec.

1513.000 Scope of part.

Subpart 1513.1—General

1513.170 Competition exceptions and justification for sole source simplified acquisition procedures.

1513.170-1 Contents of sole source justifications.

Subpart 1513.4—Imprest Fund [Reserved]

Subpart 1513.5—Purchase Orders

1513.505 Purchase order and related forms.

1513.507 Clauses.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 61 FR 57338, Nov. 6, 1996, unless otherwise noted.

1513.000 Scope of part.

This part prescribes EPA policies and procedures for the acquisition of supplies, nonpersonal services, and construction from commercial sources, the aggregate amount of which does not exceed the simplified acquisition threshold.

Subpart 1513.1—General

1513.170 Competition exceptions and justification for sole source simplified acquisition procedures.

1513.170-1 Contents of sole source justifications.

The program office submitting the procurement request must submit, as a separate attachment, a brief written statement in support of sole source acquisitions exceeding the micro-purchase threshold. The statement must cite one or more of the circumstances in FAR 6.302 and the necessary facts to support each circumstance. Although program offices may not cite the authority in FAR 6.302-7, the public interest may be used as a basis to support a sole source acquisition. If the acquisition has been synopsisized as a notice of

proposed sole source acquisition, the statement must include the results of the evaluation of responses to the synopsis.

Subpart 1513.4—Imprest Fund [Reserved]

Subpart 1513.5—Purchase Orders

1513.505 Purchase order and related forms.

Contracting Officers may use the EPA Form 1900-8, Procurement Request/Order, in lieu of Optional Forms 347 and 348 for individual purchases prepared in accordance with the instructions printed on the reverse thereof (see 1553.213-70).

[61 FR 57338, Nov. 6, 1996. Redesignated at 62 FR 33572, June 20, 1997]

1513.507 Clauses.

(a) It is the general policy of the Environmental Protection Agency that Contractor or vendor prescribed leases or maintenance agreements for equipment shall not be executed.

(b) The Contracting Officer shall, where appropriate, insert the clause at 1552.213-70, Notice to Suppliers of Equipment, in orders for purchases or leases of automatic data processing equipment, word processing, and similar types of commercially available equipment for which vendors, as a matter of routine commercial practice, have developed their own leases and/or customer service maintenance agreements.

PART 1514—SEALED BIDDING

Subpart 1514.2—Solicitation of Bids

Sec.

1514.201 Preparation of invitations for bids.

1514.201-6 Solicitation provisions.

1514.201-7 Contract clauses.

1514.205 Solicitation mailing lists.

Subpart 1514.4—Opening of Bids and Award of Contract

1514.404 Rejection of bids.

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1514.406 Mistakes in bids.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8843, Mar. 8, 1984, unless otherwise noted.

Subpart 1514.2—Solicitation of Bids

1514.201 Preparation of invitations for bids.

1514.201-6 Solicitation provisions.

The Contracting Officer shall insert the solicitation provision at 1552.214-71, Contract Award-Other Factors-Sealed Bidding, in invitations for bids when it is appropriate to describe other factors that will be used in evaluating bids for award.

[50 FR 14359, Apr. 11, 1985, as amended at 61 FR 55118, Oct. 24, 1996]

1514.201-7 Contract clauses.

The CCO is authorized to waive the inclusion of the clauses at FAR 52.214-27 and 52.214-28, in accordance with FAR 14.201-7.

[55 FR 24579, June 18, 1990, as amended at 58 FR 18976, Apr. 21, 1994]

1514.205 Solicitation mailing lists.

When a solicitation and all amendments are posted on the Internet with a synopsis providing information as to how to access the solicitation and all amendments, the CO will need to maintain a mailing list of only those individuals requesting paper copies from the contract service center/branch. When possible, the CO should also build an electronic "mailing list" of companies downloading the solicitation from the Internet.

[49 FR 8843, Mar. 8, 1984, as amended at 62 FR 37148, July 11, 1997]

Subpart 1514.4—Opening of Bids and Award of Contract

1514.404 Rejection of bids.

1514.406 Mistakes in bids.

PART 1515—CONTRACTING BY NEGOTIATION

Sec.

1515.000 Scope of part.

Subpart 1515.2—Solicitation and Receipt of Proposals and Information

1515.209 Solicitation provisions and contract clauses.

Subpart 1515.3—Source Selection

1515.302 Applicability.

1515.303 Responsibilities.

1515.305 Proposal evaluation.

1515.305-70 Scoring plans.

1515.305-71 Documentation of proposal evaluation.

1515.305-72 Release of cost information.

1515.308-71 Documentation of source selection.

Subpart 1515.4—Contract Pricing

1515.404-4 Profit.

1515.404-470 Policy.

1515.404-471 EPA structured approach for developing profit or fee objectives.

1515.404-472 Other methods.

1515.404-473 Limitations.

1515.404-474 Waivers.

1515.404-475 Cost realism.

1515.408 Solicitation provisions and contract clauses.

Subpart 1515.6—Unsolicited Proposals

1515.604 Agency points of contact.

1515.606-70 Contracting methods.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 64 FR 47410, Aug. 31, 1999, unless otherwise noted.

1515.000 Scope of part.

This part implements and supplements FAR part 15. It prescribes the Environmental Protection Agency policies and procedures for contracting for supplies and services by negotiation.

Subpart 1515.2—Solicitation and Receipt of Proposals and Information

1515.209 Solicitation provisions and contract clauses.

In addition to those provisions prescribed at FAR 15.209 and in accordance with FAR 15.203(a)(4), the contracting officer shall identify and include the evaluation factors that will be considered in making the source selection and their relative importance in each solicitation.

(a) The contracting officer shall insert the provisions at 1552.215-70, "EPA Source Evaluation and Selection Procedures—Negotiated Procurement" and either: the provision at 1552.215-71, "Evaluation Factors for Award," where all evaluation factors other than cost or price when combined are significantly more important than cost or price; or the provision in Alternate I to 1552.215-71, where all evaluation factors other than cost or price when combined are significantly less important than cost or price; or the provision in Alternate II to 1552.215-71, where all evaluation factors other than cost or price when combined are approximately equal to cost or price; or Alternate III to 1552.215-71 where award will be made to the offeror with the lowest-evaluated cost or price whose proposal meets or exceeds the acceptability standards for non-cost factors.

(b) Evaluation factors and significant subfactors should be prepared in accordance with FAR 15.305 and inserted into paragraph (b) of the provision at

1552.215-71, Alternate I, Alternate II, and if used, in Alternate III.

Subpart 1515.3—Source Selection

1515.302 Applicability.

FAR subpart 15.3 and this subpart apply to the selection of source or sources in competitive negotiation acquisitions in excess of the simplified acquisition threshold, except architect-engineering services which are covered in 1536.6.

1515.303 Responsibilities.

The Source Selection Authority (SSA) shall be established at the levels specified as follows:

(a) Acquisitions having a potential value exceeding \$25,000,000: CCO.

(b) Acquisitions having a potential value exceeding \$10,000,000 to \$25,000,000: To be determined by the CCO, unless otherwise restricted in his/her delegation of procurement authority.

(c) Acquisitions having a potential value of \$10,000,000 or less: The contracting officer.

1515.305 Proposal evaluation.

1515.305-70 Scoring plans.

When trade-offs are performed (in accordance with FAR 15.101-1), the evaluation of technical and past performance shall be accomplished using the following scoring plan or one specifically developed for the solicitation, e.g., other numeric, adjectival, color rating systems, etc.

SCORING PLAN

Value	Descriptive statement
0	The factor is not addressed, or is totally deficient and without merit.
1	The factor is addressed, but contains deficiencies and/or weaknesses that can be corrected only by major or significant changes to relevant portions of the proposal, or the factor is addressed so minimally or vaguely that there are widespread information gaps. In addition, because of the deficiencies, weaknesses, and/or information gaps, serious concerns exist on the part of the technical evaluation team about the offeror's ability to perform the required work.
2	Information related to the factor is incomplete, unclear, or indicates an inadequate approach to, or understanding of the factor. The technical evaluation team believes there is question as to whether the offeror would be able to perform satisfactorily.
3	The response to the factor is adequate. Overall, it meets the specifications and requirements, such that the technical evaluation team believes that the offeror could perform to meet the Government's minimum requirements.
4	The response to the factor is good with some superior features. Information provided is generally clear, and the demonstrated ability to accomplish the technical requirements is acceptable with the possibility of more than adequate performance.
5	The response to the factor is superior in most features.

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1515.305-71 Documentation of proposal evaluation.

In addition to the information required by FAR 15.305(a)(3), the technical evaluation documentation shall include:

(a) Score sheets prepared by each individual team member must be made available upon the contracting officer's request. For contracts valued at \$10,000,000 or less, the technical evaluation may be recorded on the short form technical evaluation format (EPA Form 1900-61) or another form specifically developed for the solicitation; and

(b) A statement that the respective team members are free from actual or potential personal conflicts of interest, and are in compliance with the Office of Government Ethics ethics provisions at 5 CFR part 2635.

(c) Any information which might reveal that an offeror has an actual or potential organizational conflict of interest.

(d) Any documentation related to exchanges with individual offerors.

1515.305-72 Release of cost information.

(a) In accordance with FAR 15.305(a)(4), the contracting officer may release the cost/price proposals to those members of the evaluation team who are evaluating proposals at his/her discretion.

(b) These individuals would then use this information to perform a cost realism analysis as described in FAR 15.404-1(d). Any inconsistencies between the proposals and the solicitation requirements and/or any inconsistencies between the cost/price and other than cost/price proposals should be identified.

1515.308-71 Documentation of source selection.

In addition to the information required by FAR 15.308, the source selection decision shall include:

(a) When there is only one proposal received or only one proposal in the competitive range, the contracting officer shall examine the solicitation to determine if it was unduly restrictive or flawed. As part of the source selection decision, the contracting officer

shall address at a minimum, the following five factors: whether the requirement could have been broken up into smaller components; whether the solicitation provided adequate response time; whether the requirement could have been satisfied with reduced staffing levels (discussion may be combined with the first factor); if applicable, whether the work required on-site could otherwise be performed at a contractor's facility, avoiding the cost and logistical implications of relocating employees; and whether the geographical area of consideration was either too narrow or too broad, so as to adversely impact competition. If the contracting officer determines that the solicitation requirements unduly restrict competition, the contracting officer shall consider making appropriate changes to the solicitation, canceling the solicitation, and reissuing the solicitation incorporating the appropriate changes. For 8(a) competitive or small business competitive set-asides, if the contracting officer in consultation with the Office of Small and Disadvantaged Business Utilization determines that the solicitation requirements unduly restrict competition, the contracting officer shall consider making appropriate changes to the solicitation, canceling the solicitation, and reissuing the solicitation incorporating the appropriate changes.

(b) The contracting officer shall provide a copy of any source selection decision that includes an analysis of the five factors described in paragraph (a) of this section to the Competition Advocate after approval of the decision by the designated Source Selection Authority.

Subpart 1515.4—Contract Pricing

1515.404-4 Profit.

This section implements FAR 15.404-4 and prescribes the EPA structured approach for establishing profit or fee prenegotiation objectives.

1515.404-470 Policy.

(a) The Agency's policy is to utilize profit to attract contractors who possess talents and skills necessary to the accomplishment of the objectives of the Agency, and to stimulate efficient

contract performance. In negotiating profit/fee, it is necessary that all relevant factors be considered, and that fair and reasonable amounts be negotiated which give the contractor a profit objective commensurate with the nature of the work to be performed, the contractor's input to the total performance, and the risks assumed by the contractor.

(b) The purpose of EPA's structured approach is:

- (1) To provide a standard method of evaluation;
- (2) To ensure consideration of all relevant factors;
- (3) To provide a basis for documentation and explanation of the profit or fee negotiation objective; and
- (4) To allow contractors to earn profits commensurate with the assumption of risk.

(c) The profit-analysis factors prescribed in the EPA structured approach for analyzing profit or fee include those prescribed by FAR 15.404(d)(1), and additional factors authorized by FAR 15.404(d)(2) to foster achievement of program objectives. These profit or fee factors are prescribed in 1515.404-471.

1515.404-471 EPA structured approach for developing profit or fee objectives.

(a) *General.* To properly reflect differences among contracts, and to select an appropriate relative profit/fee in consideration of these differences, weightings have been developed for application by the contracting officer to standard measurement bases representative of the prescribed profit factors cited in FAR 15.404(d) and EPAAR 1515.404-471(b)(1). Each profit factor or subfactor, or its components, has been assigned weights relative to their value to the contract's overall effort, and the range of weights to be applied to each profit factor.

(b)(1) *Profit/fee factors.* The factors set forth in this paragraph, and the weighted ranges listed after each factor, shall be used in all instances where the profit/fee is negotiated.

CONTRACTOR'S INPUT TO TOTAL PERFORMANCE

	Weight Range (Percent)
Direct material	1 to 4.
Professional/technical labor	8 to 15.
Professional/technical overhead	6 to 9.
General labor	5 to 9.
General overhead	4 to 7.
Subcontractors	1 to 4.
Other direct costs	1 to 3.
General and administrative expenses	5 to 8.
Contractor's assumption of contract cost risk	0 to 6.

(2) The contracting officer shall first measure the "Contractor's Input to Total Performance" by the assignment of a profit percentage within the designated weight ranges to each element of contract cost. Such costs are multiplied by the specific percentages to arrive at a specific dollar profit or fee.

(3) The amount calculated for facilities capital cost of money (FCCM) shall not be included as part of the cost base for computation of profit or fee. The profit or fee objective shall be reduced by an amount equal to the amount of facilities capital cost of money allowed. A complete discussion of the determination of facilities capital cost of money and its application and administration is set forth in FAR 31.205-10, and the Appendix to the FAR (see 48 CFR 9904.414).

(4) After computing a total dollar profit or fee for the Contractor's Input to Total Performance, the contracting officer shall calculate the specific profit dollars assigned for cost risk and performance. This is accomplished by multiplying the total Government cost objective, exclusive of any FCCM, by the specific weight assigned to cost risk and performance. The contracting officer shall then determine the profit or fee objective by adding the total profit dollars for the Contractor's Input to Total Performance to the specific dollar profits assigned to cost risk and performance. The contracting officer shall use EPA Form 1900-2 in hardcopy or electronic copy equivalent to facilitate the calculation of the profit or fee objective.

(5) The weight factors discussed in this section are designed for arriving at profit or fee objectives for other than

nonprofit and not-for-profit organizations. Nonprofit and not-for-profit organizations are addressed as follows:

(i) Nonprofit and not-for-profit organizations are defined as those business entities organized and operated:

(A) Exclusively for charitable, scientific, or educational purposes;

(B) Where no part of the net earnings inure to the benefit of any private shareholder or individual;

(C) Where no substantial part of the activities is for propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office; and

(D) Which are exempt from Federal income taxation under Section 51 of the Internal Revenue Code. (26 U.S.C.)

(ii) For contracts with nonprofit and not-for-profit organizations where fees are involved, special factor of -3 percent shall be assigned in all cases.

(c) *Assignment of values to specific factors*—(1) *General*. In making a judgment on the value of each factor, the contracting officer should be governed by the definition, description, and purpose of the factors, together with considerations for evaluation set forth in this paragraph.

(2) *Contractor's input to total performance*. This factor is a measure of how much the contractor is expected to contribute to the overall effort necessary to meet the contract performance requirements in an efficient manner. This factor, which is separate from the contractor's responsibility for contract performance, takes into account what resources are necessary, and the creativity and ingenuity needed for the contractor to perform the statement of work successfully. This is a recognition that within a given performance output, or within a given sales dollar figure, necessary efforts on the part of individual contractors can vary widely in both value, quantity, and quality, and that the profit or fee objective should reflect the extent and nature of the contractor's contribution to total performance. Greater profit opportunity should be provided under contracts requiring a high degree of professional and managerial skill and to prospective contractors whose skills, facilities, and technical assets can be ex-

pected to lead to efficient and economical contract performance. The evaluation of this factor requires an analysis of the cost content of the proposed contract as follows:

(i) *Direct material (purchased parts and other material)*. (A) Analysis of these cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required material. This evaluation shall include consideration of the number of orders and suppliers, and whether established sources are available or new sources must be developed. The contracting officer shall also determine whether the contractor will, for example, obtain the materials by routine orders or readily available supplies (particularly those of substantial value in relation to the total contract costs), or by detailed subcontracts for which the prime contractor will be required to develop complex specifications involving creative design.

(B) Consideration should be given to the managerial and technical efforts necessary for the prime contractor to administer subcontracts, and to select subcontractors, including efforts to break out subcontracts from sole sources, through the introduction of competition.

(C) Recognized costs proposed as direct material costs such as scrap charges shall be treated as material for profit evaluation.

(D) If intracompany transfers are accepted at price, in accordance with FAR 31.205-26(e), they should be excluded from the profit or fee computation. Other intracompany transfers shall be evaluated by individual components of cost, i.e., material, labor, and overhead.

(ii) *Professional/technical and general labor*. Analysis of labor should include evaluation of the comparative quality and level of the talents and experience to be employed. In evaluating labor for the purpose of assigning profit dollars, consideration should be given to the amount of notable scientific talent or unusual or scarce talent needed, in contrast to journeyman effort or supporting personnel. The diversity, or lack thereof, of scientific and engineering specialties required for contract performance, and the corresponding

need for supervision and coordination, should also be evaluated.

(iii) *Overhead and general and administrative expenses.* (A) Where practicable, analysis of these overhead items of cost should include the evaluation of the individual elements of these expenses, and how much they contribute to contract performance. This analysis should include a determination of the amount of labor within these overhead pools, and how this labor would be treated if it were considered as direct labor under the contract. The allocable labor elements should be given the same profit consideration as if they were direct labor. The other elements of indirect cost pools should be evaluated to determine whether they are routine expenses such as utilities, depreciation, and maintenance, and therefore given less profit consideration.

(B) The contractor's accounting system need not break down its overhead expenses within the classification of professional/technical overhead, general overhead and general and administrative expenses.

(iv) *Subcontractors.* (A) Subcontract costs should be analyzed from the standpoint of the talents and skills of the subcontractors. The analysis should consider if the prime contractor normally should be expected to have people with comparable expertise employed as full-time staff, or if the contract requires skills not normally available in an employer-employee relationship. Where the prime contractor is using subcontractors to perform labor which would normally be expected to be done in-house, the rating factor should generally be at or near 1 percent. Where exceptional expertise is retained, or the prime contractor is participating in the mentor-protégé program, the assigned weight should be nearer to the high end of the range.

(v) *Other direct costs.* The analysis of these costs should be similar to the analysis of direct material.

(3) *Contractor's assumption of contract cost risk.* (i) The risk of contract costs should be shifted to the fullest extent practicable to contractors, and the Government should assign a rating that reflects the degree of risk assumption. Evaluation of this risk requires a

determination of the degree of cost responsibility the contractor assumes, the reliability of the cost estimates in relation to the task assumed, and the chance of the contractor's success or failure. This factor is specifically limited to the risk of contract costs. Thus, such risks of losing potential profits in other fields are not within the scope of this factor.

(ii) The first determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk of contract cost by the Government and the contractor, depending on selection of contract type. The extremes are a cost-plus-fixed-fee contract requiring only that the contractor use its best efforts to perform a task, and a firm-fixed-price contract for a complex item. A cost-plus-fixed-fee contract would reflect a minimum assumption of cost responsibility by the contractor, whereas a firm-fixed-price contract would reflect a complete assumption of cost responsibility by the contractor. Therefore, in the first step of determining the value given for the contractor's assumption of contract cost risk, a lower rating would be assigned to a proposed cost-plus-fixed-fee best efforts contract, and a higher rating would be assigned to a firm-fixed-price contract.

(iii) The second determination is that of the reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates. An excessive cost estimate reduces the possibility that the cost of performance will exceed the contract price, thereby reducing the contractor's assumption of contract cost risk.

(iv) The third determination is that of the difficulty of the contractor's task. The contractor's task may be difficult or easy, regardless of the type of contract.

(v) Contractors are likely to assume greater cost risks only if the contracting officer objectively analyzes the risk incident to the proposed contract, and is willing to compensate contractors for it. Generally, a cost-plus-fixed-fee contract would not justify a reward for risk in excess of 1 percent, nor would a firm-fixed-price contract normally justify a reward of less

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than 4 percent. Where proper contract type selection has been made, the reward for risk by contract type would usually fall into the following percentage ranges:

Type of contract	Percentage ranges
Cost-plus-fixed-fee	0 to 1.
Prospective price determination	4 to 5.
Firm-fixed-price	4 to 6.

(A) These ranges may not be appropriate for all acquisitions. The contracting officer might determine that a basis exists for high confidence in the reasonableness of the estimate, and that little opportunity exists for cost reduction without extraordinary efforts. The contractor's willingness to accept ceilings on their burden rates should be considered as a risk factor for cost-plus-fixed-fee contracts.

(B) In making a contract cost risk evaluation in an acquisition that involves definitization of a letter contract, consideration should be given to the effect on total contract cost risk as a result of partial performance under a letter contract. Under some circumstances, the total amount of cost risk may have been effectively reduced by the existence of a letter contract. Under other circumstances, it may be apparent that the contractor's cost risk remained substantially as great as though a letter contract had not been used. Where a contractor has begun work under an anticipatory cost letter, the risk assumed is greater than normal. To be equitable, the determination of a profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all relevant circumstances, not just to the portion of costs incurred or percentage of work completed prior to definitization.

1515.404-472 Other methods.

(a) Contracting officers may use methods other than those prescribed in 1515.404-470 for establishing profit or fee objectives under the following types of contracts and circumstances:

- (1) Architect-engineering contracts;
- (2) Personal service contracts;

(3) Management contracts, e.g., for maintenance or operation of Government facilities;

(4) Termination settlements;

(5) Services under labor-hour and time and material contracts which provide for payment on an hourly, daily, or monthly basis, and where the contractor's contribution constitutes the furnishing of personnel.

(6) Construction contracts; and

(7) Cost-plus-award-fee contracts.

(b) Generally, it is expected that such methods will:

(1) Provide the contracting officer with a technique that will ensure consideration of the relative value of the appropriate profit factors described under "Profit Factors," in FAR 15.404-4(d) and

(2) Serve as a basis for documentation of the profit or fee objective.

1515.404-473 Limitations.

(a) In addition to the limitations established by statute (see FAR 15.404-4(b)(4)(i)), no administrative ceilings on profits or fees shall be established, except those identified in EPAAR (48 CFR) 1516.404-273(b).

(b) The contracting officer shall not consider any known subcontractor profit/fee as part of the basis for determining the contractor profit/fee.

1515.404-474 Waivers.

Under unusual circumstances, the CCO may specifically waive the requirement for the use of the guidelines. Such exceptions shall be justified in writing, and authorized only in situations where the guidelines method is unsuitable.

1515.404-475 Cost realism.

The EPA structured approach is not required when the contracting officer is evaluating cost realism in a competitive acquisition.

1515.408 Solicitation provisions and contract clauses.

(a) In addition to those provisions and clauses prescribed in FAR 15.408, when an exception to FAR 15.403-1 does not apply and no other means available can be used to ascertain whether a fair

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and reasonable price can be determined, the contracting officer may insert in negotiated solicitations the provisions at—

(1) 1552.215-72 when requesting information other than cost or pricing data, for cost-reimbursable, level-of-effort contracts. Use Alternate I for cost-reimbursable, level-of-effort contracts when the Government's requirement is for fully dedicated staff for a twelve month period(s) of performance and performance is on a Government facility; Alternate II for acquisitions for cost-reimbursable, level-of-effort contracts when the Government's requirement is for fully dedicated staff for a twelve month period(s) of performance and performance is not on a Government facility; and Alternate III if the Government's requirement is for the acquisition of supplies or equipment. The contracting officer may make revisions, deletions, or additions to 1552.215-72 and its Alternates I-III as needed to fit an individual acquisition, and

(2) 1552.215-73, General Financial and Organizational Information.

(b) If uncompensated overtime is proposed, the resultant contract shall include the provisions at FAR 52.237-10 and include the provision at 1552.215-74. The contracting officer may use provisions substantially the same as 1552.215-74 without requesting a deviation to the EPAAR.

Subpart 1515.6—Unsolicited Proposals

1515.604 Agency points of contact.

The Director, Grants Administration Division (3903R), EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460, is the Agency contact point established to coordinate the receipt and handling of unsolicited proposals.

[64 FR 47410, Aug. 31, 1999, 65 FR 47325, Aug. 2, 2000]

1515.606-70 Contracting methods.

The Department of Housing and Urban Development-Independent Agencies Appropriation Act contains a requirement that none of the funds provided in the Act may be used for payment through grants or contracts to

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recipients that do not share in the cost of conducting research resulting from proposals that are not specifically solicited by the Government. Accordingly, contracts for research which result from unsolicited proposals shall provide for the contractor to bear a portion of the cost of performance for work subject to the Act. The extent of the cost sharing shall reflect the mutuality of interest of the contractor and the Government. Therefore, where there is no measurable gain to the performing organization, cost sharing is not required.

PART 1516—TYPES OF CONTRACTS

Subpart 1516.3—Cost-Reimbursement Contracts

Sec.

1516.301-70 Payment of fee.

1516.303 Cost-sharing contracts.

1516.303-71 Definition.

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Subpart 1516.4—Incentive Contracts

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1516.505 Contract clauses.

Subpart 1516.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1516.603 Letter Contracts.

1516.603-3 Limitations.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8852, Mar. 8, 1984, unless otherwise noted.

Subpart 1516.3—Cost-Reimbursement Contracts

1516.301-70 Payment of fee.

The policy of EPA for cost-reimbursement, term form contracts is to make provisional payment of fee (i.e. the fixed fee on cost-plus-fixed-fee type contracts or the base fee on cost-plus-award-fee type contracts) on a percentage of work completed basis, when such a method will not prove detrimental to proper contract performance. Percentage of work completed is the ratio of the direct labor hours performed in relation to the direct labor hours set forth in the contract in clause 1552.212-70, "Level of Effort—Cost Reimbursement Term Contract." Provisional payment of fee will remain subject to withholding provisions, such as 48 CFR 52.216-8, Fixed Fee.

[56 FR 43711, Sept. 4, 1991]

1516.303 Cost-sharing contracts.

1516.303-71 Definition.

Cost-sharing is a generic term denoting any situation where the Government does not fully reimburse a contractor for all allowable costs necessary to accomplish the project under the contract. This term encompasses cost-matching and cost-limitations, in addition to cost-sharing. Cost-sharing does not include usual contractual limitations such as indirect cost ceilings in accordance with FAR 42.707, or ceilings on travel or other direct costs. Cost-sharing contracts may be required as a result of Congressional mandate.

[61 FR 14504, Apr. 2, 1996]

1516.303-72 Policy.

(a) The Agency shall use cost-sharing contracts where the principal purpose is ultimate commercialization and utilization of technologies by the private sector. There should also be a reasonable expectation of future economic benefits for the contractor and the Government beyond the Government's contract.

(b) Cost-sharing may be accomplished by a contribution to either direct or indirect costs, provided such costs are reasonable, allocable and allowable in accordance with the cost

principles of the contract. Allowable costs which are absorbed by the contractor as its share of contract costs may not be charged directly or indirectly to the Agency or the Federal Government.

(c) Unsolicited proposals will be considered on a case-by-case basis by the Contracting Officer as to the appropriateness of cost-sharing.

[61 FR 14504, Apr. 2, 1996]

1516.303-73 Types of cost-sharing.

(a) Cost-sharing may be accomplished in various forms or combinations. These include, but are not limited to: cash outlays, real property or interest therein, personal property or services, cost matching, or other in-kind contributions.

(b) In-kind contributions represent non-cash contributions provided by the performing contractor which would normally be a charge against the contract. While in-kind contributions are an acceptable method of cost-sharing, should the booked costs of property appear unrealistic, the fair market value of the property shall be determined pursuant to 1516.303-74 of this chapter.

(c) In-kind contributions may be in the form of personal property (equipment or supplies) or services which are directly beneficial, specifically identifiable and necessary for the performance of the contract. In-kind contributions must meet all of the following criteria before acceptance.

(1) Be verifiable from the contractor's books and records;

(2) Not be included as contributions under any other Federal contract;

(3) Be necessary to accomplish project objectives;

(4) Provide for types of charges that would otherwise be allowable under applicable Federal cost principles appropriate to the contractor's organization; and

(5) Not be paid for by the Federal Government under any contract, agreement or grant.

[61 FR 14504, Apr. 2, 1996]

1516.303-74 Determining the value of in-kind contributions.

In-kind contributions accepted from a contractor will be addressed on a

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case-by-case basis provided the established values do not exceed fair market values.

(a) Where the Agency receives title to donated land, building, equipment or supplies and the property is not fully consumed during performance of the contract, the Contracting Officer should establish the property's value based on the contractor's booked costs (i.e., acquisition cost less depreciation, if any) at the time of donation. If the booked costs reflect unrealistic values when compared to current market conditions, the Contracting Officer may establish another appropriate value if supported by an independent appraisal of the fair market value of the donated property or property in similar condition and circumstances.

(b) The Contracting Officer will monitor reports of in-kind costs as they are incurred or recognized during the contract period of performance to determine that the value of in-kind services does not exceed fair market values.

(c) The value of any services or the use of personal or real property donated by a contractor should be established when necessary in accordance with generally accepted accounting policies and Federal cost principles.

[61 FR 14505, Apr. 2, 1996]

1516.303-75 Amount of cost-sharing.

(a) Contractors should contribute a reasonable amount of the total project cost covered under the contract. The ratio of cost participation should correlate to the apparent advantages available to performers and the proximity of implementing commercialization, i.e., the higher the potential for future profits, the higher the contractor's share should be.

(b) Fee will not be paid to the contractor or any member of the contractor team (subcontractors and consultants) which has a substantial and direct interest in the contract, or is in a position to gain long term benefits from the contract. A vulnerability the Contracting Officer should consider in reviewing a prime contractor's request for consent to subcontract is whether subcontractors under prime cost-sharing contracts have a significant direct interest in the contract to gain long-term benefits from the contract.

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(c) The Contracting Officer, with the input of technical experts, may consider the following factors in determining reasonable levels of cost sharing:

(1) The availability of the technology to competitors;

(2) Improvements in the contractor's market share position;

(3) The time and risk necessary to achieve success;

(4) If the results of the project involve patent rights which could be sold or licensed;

(5) If the contractor has non-Federal sources of funds to include as cost participation; and

(6) If the contractor has the production and other capabilities to capitalize the results of the project.

(d) A contractor's cost participation can be provided by other subcontractors with which it has contractual arrangements to perform the contract as long as the contractor's cost-sharing goal is met.

[61 FR 14505, Apr. 2, 1996]

1516.303-76 Fee on cost-sharing contracts by subcontractors.

(a) Subcontractors under prime cost-sharing contracts who do not have a significant direct interest in the contract or who are not in a position to gain long-term benefits from the contract may earn a fee.

(b) Contracting Officers should be alert to a potential vulnerability for the Government under cost-sharing contracts when evaluating proposed subcontractors or consenting to a subcontract during contract administration, where the subcontractor is a wholly-owned subsidiary of the prime. The vulnerability consists of the subsidiary earning a large amount of fee, which could be returned to the prime through stock dividends or other intercompany transactions. This could circumvent the objective of a cost-sharing contract.

[61 FR 14505, Apr. 2, 1996]

1516.303-77 Administrative requirements.

(a) The initial Procurement Request shall reflect the total estimated cost of the cost-sharing contract. The face

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page of the contract award shall indicate the total estimated cost of the contract, the Contractor's share of the cost, and the Government's share of the cost.

(b) The manner of cost-sharing and how it is to be accomplished shall be set forth in the contract. Additionally, contracts which provide for cost-sharing shall require the contractor to maintain records adequate to reflect the nature and extent of their cost-sharing as well as those costs charged the Agency. Such records may be subject to an Agency audit.

[61 FR 14505, Apr. 2, 1996]

1516.307 Contract clauses.

(a) The Contracting Officer shall insert the clause in 1552.216-71, Date of Incurrence of Cost, in cost-reimbursement contracts when an anticipatory cost letter has been issued on the project.

(b) The Contracting Officer shall insert the clause at 1552.216-74, Payment of Fee, in solicitations and contracts where a cost-reimbursement term form contract is contemplated, unless the Contracting Officer determines that such a provision would be detrimental to ensuring proper contract performance.

(c) The Contracting Officer shall insert a clause substantially the same as 48 CFR 1552.216-76, Estimated Cost and Cost-Sharing, in solicitations and contracts where the total incurred costs are shared by the contractor on a straight percentage basis. The Contracting Officer may develop other clauses, as appropriate, following the same approach, but reflecting different cost-sharing arrangements negotiated on specific contract actions.

[49 FR 8852, Mar. 8, 1984, as amended at 56 FR 43711, Sept. 4, 1991; 61 FR 14505, Apr. 2, 1996; 61 FR 57338, Nov. 6, 1996]

1516.370 Solicitation provision.

The solicitation document shall state whether any cost-sharing is required, and may set forth a target level of cost-sharing. Although technical considerations are normally most important, the degree of cost-sharing may be considered in a selection decision when

cost becomes a determinative factor in a selection decision.

[61 FR 14505, Apr. 2, 1996]

Subpart 1516.4—Incentive Contracts

1516.404-2 Cost-plus-award-fee contracts.

1516.404-272 Definitions.

(a) *Performance Evaluation Board (PEB)*. Group of Government officials responsible for assessing the quality of contract performance and recommending the appropriate fee.

(b) *Fee Determination Official*. Individual responsible for reviewing the recommendations of the PEB and making the final determination of the amount of award fee to be awarded to the contractor.

[60 FR 43404, Aug. 21, 1995]

1516.404-273 Limitations.

(a) No award fee may be earned if the Fee Determination Official determines that contractor performance has been satisfactory or less than satisfactory. A contractor may earn award fee only for performance rated above satisfactory or excellent. All award fee plans shall disclose to offerors the numerical rating necessary to be deemed "above satisfactory" or "excellent" for award fee purposes.

(b) The base fee shall not exceed three percent of the estimated cost of the contract, exclusive of the fee.

(c) Unearned award fee may not be carried forward from one performance period into a subsequent performance period unless approved by the FDO.

(d) The payment of award fee on a provisional basis is not authorized.

[60 FR 43404, Aug. 21, 1995]

1516.404-274 Waiver.

The Chief of the Contracting Office may waive the limitations in paragraphs (a), (b), and (d) of 1516.404-273 on a case-by-case basis when unusual or compelling circumstances exist. The waiver shall be supported by a justification and coordinated with the

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Procurement Policy Branch in the Office of Acquisition Management.

[60 FR 43404, Aug. 21, 1995]

1516.405 Contract clauses.

(a) The Contracting Officer shall insert the clause at 1552.216-70, Award fee (May 2000), in solicitations and contracts where a cost-plus-award-fee contract is contemplated.

(b) The Contracting Officer shall insert the clause at 1552.216-75, Base Fee and Award Fee Proposal (SEPT 1995), in all solicitations which contemplate the award of cost-plus-award-fee contracts. The Contracting Officer shall insert the appropriate percentages.

[60 FR 43404, Aug. 21, 1995, as amended at 64 FR 3876, Jan. 26, 1999; 65 FR 31500, May 18, 2000]

Subpart 1516.5—Indefinite-Delivery Contracts

1516.505 Contract clauses.

(a) The Contracting Officer shall insert the clause in 1552.216-72, Ordering—By Designated Ordering Officers, in indefinite delivery/indefinite quantity type solicitations and contracts.

(b) The Contracting Officer shall insert the clause in 1552.216-73, Fixed Rates for Services—Indefinite Delivery/Indefinite Quantity Contract, in solicitations and contracts to specify fixed rates for services.

Subpart 1516.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1516.603 Letter Contracts.

1516.603-3 Limitations.

The CCO is authorized to make the determination in FAR 16.603-3.

[55 FR 24580, June 18, 1990, as amended at 59 FR 18976, Apr. 21, 1994]

PART 1517—SPECIAL CONTRACTING METHODS

Subpart 1517.2—Options

Sec.

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1517.207 Exercise of options.

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1517.208 Solicitation provisions and contract clauses.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8854, Mar. 8, 1984, unless otherwise noted.

Subpart 1517.2—Options

1517.204 Contracts.

The CCO may approve a contract with a base contract period and option periods which total in excess of five (5) years, unless otherwise prohibited by statute.

[60 FR 12713, Mar. 8, 1995]

1517.207 Exercise of options.

(a) Unless otherwise approved by the Chief of the Contracting Office, contracts for services employing option periods shall require that a preliminary written notice of the Government's intention to exercise the option be furnished to the Contractor a minimum of sixty (60) calendar days prior to the date for the exercise of the option. Failure to provide such preliminary notice within the timeframe established in the contract waives the Government's right to unilaterally exercise the option and requires the negotiation of a bilateral contract modification in order to extend the period of performance, where such an extension is authorized.

(b) When the term of the service contract coincides with the fiscal year and delays in receipt of authority to obligate funds for the new fiscal year are anticipated, the Contracting Officer, if the contract so provides (see FAR 17.204(d)), may, within 60 days after the end of the fiscal year, unilaterally exercise an option to extend the term of the contract. The option may be exercised only if funds become available within the 60-day period. In the event that sufficient funding is not available within the 60 day period, the Government waives the right to exercise the option, thereby rendering any additional requirements subject to full and open competition requirements.

(c) The Contracting Officer, if the contract so provides, may, subject to the conditions in FAR 17.204(d), 32.703-2, and 32.705-1(a), exercise an option

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contingent upon the availability of funds. To exercise such an option, the contract must contain the clause in FAR 52.232-18, Availability of Funds. Under no circumstances shall any action be taken which could be construed as creating a legal liability on the part of the Government until a formal notice of availability of funds in the form of a contract modification has been issued by the Contracting Officer.

[49 FR 8854, Mar. 8, 1984, as amended at 50 FR 14359, Apr. 11, 1985]

1517.208 Solicitation provisions and contract clauses.

(a) The Contracting Officer shall insert the solicitation provision at 1552.217-70, Evaluation of Contract Options, in Requests for Proposals when options are included.

(b) The Contracting Officer shall insert the clause at 1552.217-71, Option To

Extend the Term of the Contract—Cost-Type Contract, when applicable.

(c) The Contracting Officer shall insert the clause at 1552.217-72, Option To Extend the Term of the Contract—Cost-Plus-Award-Fee Contract, when applicable.

(d) The Contracting Officer shall insert the clause at 1552.217-73, Option for Increased Quantity—Cost-Type Contract, when applicable.

(e) The Contracting Officer shall insert the clause at 1552.217-74, Option for Increased Quantity—Cost-Plus-Award-Fee Contract, when applicable.

(f) The Contracting Officer shall insert the clause at 1552.217-75, Option To Extend the Effective Period of the Contract—Time and Materials or Labor Hour Contract, when applicable.

(g) The Contracting Officer shall insert the clause at 1552.217-76, Option To Extend the Effective Period of the Contract—Indefinite Delivery/Indefinite Quantity Contract, when applicable.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1519—SMALL BUSINESS PROGRAMS

Subpart 1519.2—Policies

Sec.

1519.201 Policy.

1519.201-71 Director of Small and Disadvantaged Business Utilization.

1519.201-72 Small and disadvantaged business utilization specialists.

1519.202-5 Data collection and reporting requirements.

Subpart 1519.5—Set-Asides for Small Business

1519.501 Review of acquisitions.

1519.503 Class set-aside for construction.

Subpart 1519.6—Certificates of Competency and Determinations of Eligibility [Reserved]

Subpart 1519.7—Subcontracting with Small Business and Small Disadvantaged Business Concerns

1519.705-2 Determining the need for a subcontract plan.

1519.705-4 Reviewing the subcontracting plan.

1519.705-70 Synopsis of contracts containing Pub. L. 95-507 subcontracting plans and goals.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8855, Mar. 8, 1984, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to Part 1519 appear at 61 FR 57338, Nov. 6, 1996.

Subpart 1519.2—Policies

1519.201 Policy.

Each program's Assistant or Associate Administrator shall be responsible for developing its socioeconomic goals on a fiscal year basis. The goals shall be developed in collaboration with the supporting Chiefs of Contracting Offices and the local Small Business Specialist (SBS), and the Office of Small and Disadvantaged Business Utilization (OSDBU). The goals will be based on advance procurement plans and past performance. The goals shall be submitted to the Director,

OSDBU, at least thirty (30) days prior to the start of the fiscal year.

[49 FR 8855, Mar. 8, 1984, as amended at 61 FR 57338, 57339, Nov. 6, 1996]

1519.201-71 Director of Small and Disadvantaged Business Utilization.

The Director, OSDBU, provides guidance and advice, as appropriate, to Agency program and contracts officials on small and small disadvantaged business programs. The Director, OSDBU, is the central point of contact for inquiries concerning the small and disadvantaged business programs from industry, the Small Business Administration (SBA), and the Congress, and shall advise the Administrator and staff of such inquiries as required. The Director, OSDBU, shall represent the Agency in the negotiations with the other Government agencies on small and small disadvantaged business matters.

[49 FR 8855, Mar. 8, 1984. Redesignated at 62 FR 57338, 57339, Nov. 6, 1997]

1519.201-72 Small and disadvantaged business utilization specialists.

(a) Small Business Specialists (SBS) shall be appointed in writing for each contracting office. The SBS will normally be appointed from members of staffs of the appointing authority. The SBS is administratively responsible directly to the appointing authority and, on matters relating to small and small disadvantaged business program activities, receives technical guidance from the Director, OSDBU. The appointing authorities are the Chiefs of the Contracting Offices.

(b) A copy of each appointment and termination of all SBS specialists shall be forwarded to the Director, OSDBU. In addition to performing the duties outlined in paragraph (c) of this section that are normally performed in the activity to which assigned, the SBS shall perform such additional functions as may be prescribed from time to time in furtherance of overall small and small disadvantaged business utilization program goals. The SBS may be appointed on either a full- or part-time basis; however, when appointed on a

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part-time basis, the small business duty shall take precedence over collateral responsibilities.

(c) The SBS appointed pursuant to paragraph (a) of this section, shall perform the following duties as appropriate:

(1) Maintain a program designed to locate capable small business sources for current and future acquisitions;

(2) Coordinate inquiries and requests for advice from small and small disadvantaged business concerns on acquisition matters;

(3) Review all proposed solicitations in excess of the simplified acquisition threshold, assure that small business concerns will be afforded an equitable opportunity to compete, and, as appropriate, initiate recommendations for small business set-asides, or offers of requirements to the SBA for the 8(a) program, and complete EPA Form 1900-37, "Record of Procurement Request Review," as appropriate;

(4) Take action to assure the availability of adequate specifications and drawings, when necessary, to obtain small business participation in an acquisition. When small business concerns cannot be given an opportunity on a current acquisition, initiate action, in writing, with appropriate technical and contracting personnel to ensure that necessary specifications and/or drawings for future acquisitions are available.

(5) Review proposed contracts for possible breakout of items or services suitable for acquisition from small business and small disadvantaged business concerns;

(6) Advise small businesses with respect to the financial assistance available under existing laws and regulations and assist such concerns in applying for financial assistance;

(7) Participate in the evaluation of a prime contractor's small business subcontracting programs;

(8) Assure that adequate records are maintained, and accurate reports prepared, concerning small business participation in acquisition programs (see 1519.202-5);

(9) Make available to SBA copies of solicitations when so requested;

(10) Act as liaison with the appropriate SBA office or representative in

connection with set-asides, certificates of competency, size classification, and any other matter concerning the small or small disadvantaged business programs.

[49 FR 8855, Mar. 8, 1984, as amended at 55 FR 24579, June 18, 1990. Redesignated and amended at 61 FR 57338, 57339, Nov. 6, 1996]

1519.202-5 Data collection and reporting requirements.

(a) As required, monthly reports of factual information, covering acquisition actions and dollars awarded to small businesses, small disadvantaged businesses, women-owned small businesses, the Small Business Administration under the authority of section 8(a) of the Small Business Act, and information on actions and dollars made under small business set-asides shall be submitted by the Procurement and Contracts Management Division, to the Director, OSDDBU.

(b) The Financial Management Division will submit to the Director, OSDDBU, a copy of the Small Purchase Activity Report that shows by each EPA purchasing activity the following information (cumulative monthly) for small purchases:

(1) Total actions and dollar value of awards;

(2) Total actions and dollar value of awards to all businesses;

(3) Total actions and dollar value of awards to small businesses;

(4) Total actions and dollar value of construction awards to small businesses made by set-aside;

(5) Total actions and dollar value of small business awards made by set-asides, excluding set-asides for construction;

(6) Total actions and dollar value of awards made to the Small Business Administration pursuant to section 8(a) of the Small Business Act; and

(7) Total actions and dollar value of awards made to small disadvantaged businesses.

(c) The reports identified in paragraphs (a) and (b) of this section are to be submitted to the Director, OSDDBU, no later than the 20th day following the end of the reporting period with the exception of the last report of the fiscal year which shall be submitted no

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later than the 30th day following the end of the fiscal year.

Subpart 1519.5—Set-Asides for Small Business

1519.501 Review of acquisitions.

(a) If no Small Business Administration (SBA) representative is available, the Small Business Specialist (SBS) shall initiate recommendations to the Contracting Officer for small business set-asides with respect to individual acquisitions or classes of acquisitions or portions thereof.

(b) When the SBS has recommended that all, or a portion, of an individual acquisition or class of acquisitions be set aside for small business, the Contracting Officer shall promptly either: (1) Concur in the recommendation or (2) disapprove the recommendation, stating in writing the reasons for disapproval. If the Contracting Officer disapproves the recommendation of the SBS, the SBS may appeal to the appropriate appointing authority, whose decision shall be final.

[49 FR 8855, Mar. 8, 1984, as amended at 61 FR 57338, 57339, Nov. 6, 1996]

1519.503 Class set-aside for construction.

(a) Each proposed acquisition for construction estimated to cost between \$10,000 and \$1,000,000 shall be set-aside for exclusive small business participation. Such set-asides shall be considered to be unilateral small business set-asides, and shall be withdrawn in accordance with the procedure of FAR 19.506 only if found not to serve the best interest of the Government.

(b) Small business set-aside preferences for construction acquisitions in excess of \$1,000,000 shall be considered on a case-by-case basis.

Subpart 1519.6—Certificates of Competency and Determinations of Eligibility [Reserved]

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Subpart 1519.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

1519.705-2 Determining the need for a subcontract plan.

One copy of the determination required by FAR 19.705-2(c) shall be placed in the contract file and one copy provided the Director, Office of Small and Disadvantaged Business Utilization (OSDBU).

1519.705-4 Reviewing the subcontracting plan.

In determining the acceptability of a proposed subcontracting plan, the Contracting Officer shall obtain advice and recommendations from the OSDBU, which shall in turn coordinate review by the Small Business Administration Procurement Center Representative (if any).

1519.705-70 Synopsis of contracts containing Pub. L. 95-507 subcontracting plans and goals.

The synopsis of contract award, where applicable, shall include a statement identifying the contract as one containing Pub. L. 95-507 subcontracting plans and goals.

[49 FR 8855, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

PART 1520—LABOR SURPLUS AREA CONCERNS

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Subpart 1520.1—General [Reserved]

Subpart 1520.3—Labor Surplus Area Subcontracting Program [Reserved]

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**PART 1522—APPLICATION OF
LABOR LAWS TO GOVERNMENT
ACQUISITIONS**

Subpart 1522.1—Basic Labor Policies

Sec.

1522.103 Overtime.

**Subpart 1522.6—Walsh-Healey Public
Contracts Act**

1522.608 Procedures.

**Subpart 1522.8—Equal Employment
Opportunity**

1522.803 Responsibilities.

1522.804 Affirmative action programs.

1522.804-2 Construction.

**Subpart 1522.10—Service Contract Act of
1965 [Reserved]**

**Subpart 1522.13—Special Disabled and
Vietnam Era Veterans [Reserved]**

**Subpart 1522.14—Employment of the
Handicapped [Reserved]**

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8857, June 15, 1984, unless otherwise noted.

**Subpart 1522.1—Basic Labor
Policies**

1522.103 Overtime.

**Subpart 1522.6—Walsh-Healey
Public Contracts Act**

1522.608 Procedures.

**Subpart 1522.8—Equal
Employment Opportunity**

1522.803 Responsibilities.

If the applicability of E.O. 11246 and implementing regulations are questioned, the Contracting Officer shall

route the matter through the CCO to the EPA Office of Civil Rights.

[49 FR 8857, June 15, 1984, as amended at 55 FR 24579, June 18, 1990; 59 FR 18976, Apr. 21, 1994]

1522.804 Affirmative action programs.

1522.804-2 Construction.

Each contracting office having construction contract responsibility shall maintain a list of geographical areas subject to affirmative action requirements. The list can be obtained from the Office of Contract Compliance Programs, U.S. Department of Labor.

[49 FR 8857, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

**Subpart 1522.10—Service
Contract Act of 1965 [Reserved]**

**Subpart 1522.13—Special Dis-
abled and Vietnam Era Vet-
erans [Reserved]**

**Subpart 1522.14—Employment of
the Handicapped [Reserved]**

**PART 1523—ENVIRONMENTAL,
CONSERVATION, OCCUPA-
TIONAL SAFETY, AND DRUG-FREE
WORKPLACE**

**Subpart 1523.3—Hazardous Material and
Material Safety Data**

Sec.

1523.303 Contract clause.

1523.303-70 Protection of human subjects.

1523.303-71 Decontamination of Govern-
ment-furnished property.

**Subpart 1523.70—Energy-Efficient
Computer Equipment**

1523.7000 Background.

1523.7001 Policy.

1523.7002 Waivers.

1523.7003 Contract clause.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

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SOURCE: 49 FR 8857, Mar. 8, 1984, unless otherwise noted.

Subpart 1523.3—Hazardous Material and Material Safety Data

1523.303 Contract clause.

1523.303-70 Protection of human subjects.

Contracting Officers shall insert the contract clause at 1552.223-70 when the contract involves human test subjects.

1523.303-71 Decontamination of Government-furnished property.

Contracting Officers shall insert the contract clause at 1552.245-70, Decontamination of Government-Furnished Property, when it is anticipated that a Contractor will use Government-furnished or Contractor-acquired property in the clean-up of hazardous or toxic substances in the environment.

Subpart 1523.70—Energy-Efficient Computer Equipment

SOURCE: 61 FR 14506, Apr. 2, 1996, unless otherwise noted.

1523.7000 Background.

(a) Executive Order 12845 requires the Federal Government to purchase only microcomputers, including personal computers, monitors and printers, which meet "EPA Energy Star" requirements for energy efficiency. This equipment is often identified by the Energy Star™ logo and is capable of entering and recovering from an energy-efficient low power state.

(b) The EPA Energy Star Computer Program is a voluntary partnership effort with the computer industry to promote the introduction of energy-efficient personal computers, monitors, and printers which can reduce air pollution caused by utility power generation, and ease the burden on building air conditioning and electrical systems. The Energy Star Program is designed to be a self-certifying computer industry program, policed informally by the computer industry itself.

(c) FIRMR Bulletin C-35 (dated 11/19/93) describes procedures that will promote the acquisition of energy-effi-

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cient microcomputers and associated computer equipment.

1523.7001 Policy.

(a) The "Energy Star" Executive Order (E.O. 12845) applies to the following equipment:

(1) Personal Computers (stand-alone).

(2) Personal Computers (end-user on network).

(3) Notebook and other portable computers.

(4) PC printers - laser, inkjet or dot matrix (stand-alone or networked).

(5) High-speed printers used on a PC network (less than approximately 20 pages per minute).

(6) Monitors (CRT or Flat-panel LCD).

(b) "Energy Star" requirements do not apply to the following equipment:

(1) Workstations.

(2) File servers.

(3) Mainframe equipment.

(4) Minicomputers.

(5) High-speed printers used with mainframe computers (30 or more pages per minute).

(6) Mainframe or "dumb" terminals.

(7) X-terminals.

(c) All new acquisitions for microcomputers, including personal computers, monitors, and printers, shall contain specifications which meet EPA Energy Star requirements for energy efficiency unless a waiver has been obtained in accordance with internal Agency procedures. The EPA Energy Star requirement applies in instances where the Contracting Officer authorizes the contractor to acquire property in accordance with FAR 45.302-1.

(d) The Energy Star requirement also applies to all applicable equipment ordered from GSA Schedule Contracts, open market buys, and Bankcard purchases.

1523.7002 Waivers.

(a) There are several types of computer equipment which technically fall under the current Energy Star Program, but for which EPA established blanket waivers because Energy Star compliant versions of this equipment were unavailable in the marketplace. Blanket waivers apply to the following types of equipment:

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(1) LAN servers, including file servers; application servers; communication servers; including bridges and routers;

(2) UNIX RISC based processors with their high-end monitors;

(3) Large LAN printers (greater than 19 pages/minute output); and

(4) Scientific computing equipment which is used for real-time data acquisition and which, if subjected to a power down mode, would jeopardize the research project.

(b) It is anticipated that there will be Energy Star models of this equipment in the future, but in the near term EPA will not specify Energy Star qualifications when purchasing the items listed in this section.

1523.7003 Contract clause.

The Contracting Officer shall insert a clause substantially the same as 48 CFR 1552.239-103, Acquisition of Energy Star Compliant Microcomputers, Including Personal Computers, Monitors, and Printers, in all solicitations and contracts for the acquisition of microcomputers, including personal computers, monitors and printers. The Contracting Officer shall also insert the clause in solicitations and contracts where the Contracting Officer authorizes the contractor to acquire property in accordance with FAR 45.302-1.

PART 1524—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1524.1—Protection of Individual Privacy

Sec.

1524.104 Solicitation provisions.

Subpart 1524.2—Freedom of Information Act [Reserved]

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Subpart 1524.1—Protection of Individual Privacy

1524.104 Solicitation provisions.

The Contracting Officer shall insert the provision at 1552.224-70, Social Security Numbers of Consultants and Certain Sole Proprietors and Privacy Act Statement, in all solicitations.

[49 FR 8858, Mar. 8, 1984]

Subpart 1524.2—Freedom of Information Act [Reserved]

PART 1525—FOREIGN ACQUISITION

Subpart 1525.1—Buy American Act—Supplies [Reserved]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1527—PATENTS, DATA, AND COPYRIGHTS

Subpart 1527.4—Rights in Data and Copyrights

Sec.

1527.404 Basic rights in data clause.

1527.409 Solicitation provisions and contract clauses.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Subpart 1527.4—Rights in Data and Copyrights

1527.404 Basic rights in data clause.

The Contracting Officer shall insert in the *Limited Rights Notice* when using Alternate II of FAR 52.227-14 the following purposes for disclosure of limited data outside the Government.

(a) Use (except for manufacture) by support service contractors;

(b) Evaluation by nongovernment evaluators;

(c) Use (except for manufacture) by other contractors participating in the Government's program of which the specific contract is a part, for information and use in connection with the work performed under each contract;

(d) Emergency repairs or overhaul work;

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

[55 FR 48623, Nov. 21, 1990]

1527.409 Solicitation provisions and contract clauses.

The Contracting Officer shall insert the clause in 1552.227-76 in all Superfund solicitations and contracts in excess of the simplified acquisition threshold and, as appropriate, in simplified acquisition procedures. The clause may be used in other contracts if considered necessary by the Contracting Officer.

[59 FR 18620, Apr. 19, 1994, as amended at 61 FR 57339, Nov. 6, 1996]

PART 1529—TAXES

Subpart 1529.3—State and Local Taxes

1529.303 Application of State and local taxes to Government contractors and subcontractors.

Subpart 1529.4—Contract Clauses

1529.401 Domestic contracts.

1529.401-70 Cost-reimbursable type contracts.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 54 FR 49998, Dec. 4, 1989, unless otherwise noted.

Subpart 1529.3—State and Local Taxes

1529.303 Application of State and local taxes to Government contractors and subcontractors.

Contractors are responsible for determining the availability of State and local tax exemptions and obtaining such exemptions, if available, unless the Contracting Officer determines under FAR 31.205-41(b)(3) that the administrative burden outweighs the corresponding benefit. Contractors are responsible for ensuring that subcontractors also seek and obtain such exemptions, if available.

Subpart 1529.4—Contract Clauses

1529.401 Domestic contracts.

1529.401-70 Cost-reimbursable type contracts.

Contracting Officers shall insert the clause at 1552.229-70 in all solicitations and contracts when it is anticipated a cost-reimbursable type contract shall be used or a contractor or subcontractor shall be reimbursed for materials at cost.

PART 1530—COST ACCOUNTING STANDARDS

Subpart 1530.3—CAS Contract Requirements [Reserved]

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PART 1531—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1531.1—Applicability [Reserved]

PART 1532—CONTRACT FINANCING

Sec.

1532.006 Reduction or suspension of contract payments upon finding of fraud.

1532.006-1 General.

1532.006-2 Definitions.

1532.006-3 Responsibilities.

Subpart 1532.1—General

1532.102 Description of contract financing methods.

1532.111 Contract clauses.

1532.170 Forms.

Subpart 1532.2—Commercial Item Purchase Financing

1532.201 Statutory authority.

Subpart 1532.4—Advance Payments [Reserved]

Subpart 1532.8—Assignment of Claims

1532.805 Procedure.

1532.805-70 Forms.

Subpart 1532.9—Prompt Payment

1532.908 Contract clauses.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8858, Mar. 8, 1984, unless otherwise noted.

1532.006 Reduction or suspension of contract payments upon finding of fraud.

1532.006-1 General.

(a)-(b) [Reserved]

(c) Agency responsibilities and determinations under FAR 32.006 are, consistent with FAR 32.006-1(c), delegated to the Head of the Contracting Activity, if that individual is not below Level IV of the Executive Schedule. If the Head of the Contracting Activity is below Level IV of the Executive Schedule, then Agency responsibilities and determinations under FAR 32.006 are delegated to the Assistant Adminis-

trator for Administration and Resources Management.

[65 FR 37292, June 14, 2000]

1532.006-2 Definitions.

The Remedy Coordination Official for EPA is the Assistant Inspector General for Investigations.

[65 FR 37292, June 14, 2000]

1532.006-3 Responsibilities.

(a) EPA shall use the procedures in FAR 32.006-4 when determining whether to reduce or suspend further payments to a contractor when there is a report from the Remedy Coordination Official finding substantial evidence that the contractor's request for advance, partial or progress payments is based on fraud and recommending that the Agency reduce or suspend such payments to the contractor.

(b) [Reserved]

[65 FR 37292, June 14, 2000]

Subpart 1532.1—General

1532.102 Description of contract financing methods.

Progress payments based on a percentage or stage of completion are authorized for use as a payment method under EPA contracts or subcontracts for construction and alteration or repair of buildings, structures, or other real property.

[60 FR 38505, July 27, 1995]

1532.111 Contract clauses.

The Contracting Officer shall insert the clause at 1552.232-73, Payments—Fixed Rate Services Contract, in solicitations and indefinite delivery/indefinite quantity contracts when services are being acquired on a fixed-rate basis.

1532.170 Forms.

(a) EPA Form 1900-10 Contractor's Cumulative Claim and Reconciliation, at 1553.232-74, shall be used for an accounting of the cumulative charges and costs for cost-reimbursement contracts from inception of the contract to completion. It shall be submitted by the Contractor upon submission of the completion voucher.

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(b) EPA Form 1900-68, Notice of Contract Costs Suspended and/or Disallowed, at 1553.232-75, shall be inserted in all cost-reimbursement type and fixed-rate type contracts.

[49 FR 8858, Mar. 8, 1984, as amended at 61 FR 29317, June 10, 1996]

Subpart 1532.2—Commercial Item Purchase Financing

1532.201 Statutory authority.

Authority for making the determination under FAR 32.201 is delegated to a level above the Contracting Officer.

[61 FR 57339, Nov. 6, 1996]

Subpart 1532.4—Advance Payments [Reserved]

Subpart 1532.8—Assignment of Claims

1532.805 Procedure.

1532.805-70 Forms.

(a) EPA Form 1900-3, Assignee's Release, at 1553.232-70 is required to be submitted by the assignee for cost-reimbursement contracts prior to final payment under the contract.

(b) EPA Form 1900-4, Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts, at 1553.232-71 must accompany the assignee's release prior to final payment under cost-reimbursement contracts.

(c) EPA Form 1900-5, Contractor's Assignment of Refunds, Rebates and Credits, at 1553.232-72 must be prepared by the Contractor prior to final payment under cost-reimbursement contracts and must accompany the Contractor's Release.

(d) EPA Form 1900-6, Contractor's Release, at 1553.232-73 must be submitted by the Contractor prior to final payment under cost-reimbursement contracts.

Subpart 1532.9—Prompt Payment

1532.908 Contract clauses.

The Contracting Officer shall insert a clause substantially the same as that at 1552.232-70 in all solicitations and contracts for cost reimbursable acqui-

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sitions. If a fixed-rate type contract is contemplated, the Contracting Officer shall use the clause with its Alternate I.

[61 FR 29317, June 10, 1996]

PART 1533—PROTESTS, DISPUTES AND APPEALS

Subpart 1533.1—Protests

Sec.

1533.103 Protests to the Agency.

Subpart 1533.2—Disputes and Appeals

1533.203 Applicability.

1533.212 Contracting Officer's duties upon appeal.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 50 FR 14359, Apr. 11, 1985, unless otherwise noted.

Subpart 1533.1—Protests

1533.103 Protests to the Agency.

Protests to the Agency are processed pursuant to the requirements of FAR 33.103. Contracting Officers must include in every solicitation the provision at 1552.233-70, Notice of Filing Requirements for Agency Protests.

[64 FR 17110, Apr. 8, 1999]

Subpart 1533.2—Disputes and Appeals

1533.203 Applicability.

Pursuant to an interagency agreement between the EPA and the Department of the Interior Board of Contract Appeals (IBCA), the IBCA will hear appeals from final decisions of EPA Contracting Officers issued pursuant to the Contract Disputes Act. The rules and regulations of the IBCA appear in 43 CFR part 4.

1533.212 Contracting Officer's duties upon appeal.

Upon receipt of notice of appeal, the Contracting Officer shall take the following actions:

(a) *Submission of the notice of appeal to IBCA.* (1) When a notice of appeal in any form has been received, the Contracting Officer shall endorse on it the

date of the notice's mailing (or the date of receipt if the notice was otherwise conveyed) and within 5 days shall forward the notice of appeal to the IBCA by certified mail. The Contracting Officer shall verbally notify the legal counsel that the appeal has been received.

(2) A notice of appeal, whether filed within the time prescribed by the "Disputes" clause or not, shall be submitted to the IBCA. The Contracting Officer shall forward promptly every notice of appeal to IBCA even if the intention to appeal is only vaguely or indirectly expressed, and regardless of the form of the notice, or of the method by which the notice was furnished to the Contracting Officer.

(3) Copies of the notice of appeal shall be sent simultaneously to the Quality Assurance Branch, Office of Acquisition Management and to legal counsel.

(b) *Establishment and submission of appeal files to IBCA.* (1) Following receipt of a notice of appeal, or advice that an appeal has been filed, the Contracting Officer shall promptly compile the appeal file (copies of all documents pertinent to the appeal), and four duplicate appeal files. The file shall include the following:

(i) The findings of fact and the Contracting Officer's final decision from which the appeal is taken, and the letter or letters or other documents of claim in response to which the decision was issued;

(ii) The contract, and pertinent plans, specifications, amendments, and change orders;

(iii) Correspondence between the parties and other data pertinent to the appeal;

(iv) Transcripts of any testimony taken during the course of proceedings and affidavits, or statements of any witnesses on the matter in dispute

made prior to the filing of the notice of appeal with the Board;

(v) Such additional information as may be considered material.

(2) In addition to the above, the Contracting Officer shall prepare an index listing each document included in the file submitted to the IBCA, and place copies of such index in the submission and duplicate files.

(3) Contracting Officers, in making the submission, may not submit original documents which are a part of the official contract file. Copies of the pertinent documents shall be submitted.

(4) Within 15 days of receipt or advice of a notice of appeal, the official and two duplicate files shall be forwarded through legal counsel to the Office of Acquisition Management for review. The Procurement and Contracts Management Division shall forward the official appeal file to the IBCA within the 30 day time limitation set forth in 43 CFR 4.104(a). One duplicate file shall be retained by the Contracting Officer, one by the Procurement and Contracts Management Division, and one by legal counsel.

(5) If for any reason the Contracting Officer anticipates that a timely submission cannot be made, he/she shall immediately advise legal counsel by telephone of the extent of the anticipated delay and the reasons therefor. However, every effort will be exerted to make timely submissions.

(6) At the time of transmittal of the appeal file to the Board, the Contracting Officer shall notify the appellant of the transmittal and provide a copy of the appeal file to the appellant. Within the transmittal to the IBCA, the Contracting Officer shall indicate that the appellant has been provided with a copy of the appeal file.

[50 FR 14359, Apr. 11, 1985, as amended at 59 FR 18977, Apr. 21, 1994]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1535—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.

1535.007 Solicitations.

1535.007-70 Contract clauses.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

1535.007 Solicitations.

(a) Contracting officers shall insert 48 CFR 1552.235-73, Access to Federal Insecticide, Fungicide, and Rodenticide Act Confidential Business Information, in all solicitations when the contracting officer has determined that EPA may furnish the contractor with confidential business information which EPA had obtained from third parties under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*).

(b) Contracting officers shall insert 48 CFR 1552.235-75, Access to Toxic Substances Control Act Confidential Business Information, in all solicitations when the contracting officer has determined that EPA may furnish the contractor with confidential business information which EPA had obtained from third parties under the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*).

[62 FR 38477, July 18, 1997]

1535.007-70 Contract clauses.

The following clauses are prescribed for research and development (R&D) contracts. They may also be used in other than R&D contracts when applicable (see 1537.110).

(a) The Contracting Officer shall insert the contract clause at 1552.235-70, Screening Business Information for Claims of Confidentiality, in contracts when the Contracting Officer has determined that during performance of this contract, the Contractor may be required to collect information to perform the work required under this contract. Some of the information may consist of trade secrets or commercial or financial information that would be considered as proprietary or confidential

by the business that has the right to the information.

(b) The Contracting Officer shall insert the clause at 48 CFR 1552.235-71, Treatment of Confidential Business Information, in solicitations and contracts when the Contracting Officer has determined that in the performance of the contract, EPA may furnish confidential business information to the contractor obtained from third parties under the Clean Air Act (42 U.S.C. 7401 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. 301 *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*), and the provision at 48 CFR 1552.235-70, Release of Contractor Confidential Business Information. EPA regulations on confidentiality of business information in 40 CFR part 2, subpart B require that the contractor agree to the clause entitled "Treatment of Confidential Business Information" before any confidential business information may be furnished to the contractor.

(c) The Contracting Officer shall insert the clause at 48 CFR 1552.235-76, Treatment of Confidential Business Information (TSCA), in solicitations and contracts when the Contracting Officer has determined that in the performance of the contract, EPA may furnish the contractor with confidential business information obtained from third parties under the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*). EPA regulations on confidentiality of business information in 40 CFR part 2, subpart B require that the contractor agree to the clause entitled "Treatment of Confidential Business Information" before any confidential business information may be furnished to the contractor.

(d) The Contracting Officer shall insert the clause at 48 CFR 1552.235-77, Data Security for Federal Insecticide,

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Fungicide, and Rodenticide Act, Confidential Business Information, when the contract involves access to confidential business information related to the Federal Insecticide, Fungicide, and Rodenticide Act, and the Treatment of Confidential Business Information clause (48 CFR 1552.235-71) and the Screening Business Information for Claims of Confidentiality clause (48 CFR 1552.235-70) are included.

(e) The Contracting Officer shall insert the clause at 48 CFR 1552.235-78, Data Security for Toxic Substances Control Act Confidential Business Information, when the contract involves access to confidential business information related to the Toxic Substances Control Act, and the Treatment of Confidential Business Information clause (48 CFR 1552.235-76) and Screening Business Information for Claims of Confidentiality clause (48 CFR 1552.235-70) are included.

(f) Contracting Officers shall insert the clause 48 CFR 1552.235-79, Release of Contractor Confidential Business Information, in all solicitations and contracts in order to authorize the Agency to release confidential business information under certain circumstances.

[49 FR 8862, Mar. 8, 1984; 49 FR 24734, June 15, 1984, as amended at 61 FR 14265, Apr. 1, 1996; 61 FR 57339, Nov. 6, 1996]

PART 1536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1536.2—Special Aspects of Contracting for Construction

Sec.

1536.201 Evaluation of contracting performance.

1536.209 Construction contracts with architect-engineer firms.

Subpart 1536.5—Contract Clauses

1536.521 Specifications and drawings for construction.

Subpart 1536.6—Architect-Engineer Services

1536.602 Selection of firms for architect-engineer contracts.

1536.602-2 Establishment of evaluation boards.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8863, Mar. 8, 1984, unless otherwise noted.

Subpart 1536.2—Special Aspects of Contracting for Construction

1536.201 Evaluation of contracting performance.

(a) The Contracting Officer will obtain input from the Project Officer on the contractor's performance. The Contracting Officer will prepare the contractor performance report as prescribed in FAR 36.201 within two weeks after final acceptance of the work or contract termination.

(b) Prior to submitting any report or unsatisfactory performance to the reviewing official, the Contracting Officer will advise the contractor of any proposed unsatisfactory rating (see FAR 36.201(a)(3)).

(c) The official at one level above the Contracting Officer will review each performance report.

(d) The Contracting Officer will forward the original of the performance report to the Quality Assurance Branch, Office of Acquisition Management. The Quality Assurance Section will file the form in the contractor performance evaluation files which it maintains.

(e) The Quality Assurance Branch will review the report when it is received and compare it with recent evaluations of that contractor. If the Quality Assurance Section discerns a pattern of unsatisfactory performance, it will notify the Contracting Officer for possible action, which may include referral of the matter to the Compliance Staff or to the Inspector General for investigation.

(f) Information from the performance report shall not be released outside of the Agency, except to other Government agencies at their written request, and on condition that the information will not be made available outside the Government. Requests from non-Government sources for information from performance reports shall be processed in accordance with EPA's Freedom of Information Act procedures at 40 CFR part 2.

[49 FR 8863, Mar. 8, 1984, as amended at 59 FR 18977, Apr. 21, 1994]

1536.209 Construction contracts with architect-engineer firms.

(a) The provisions of FAR 36.209 do not apply to subcontractors performing treatability studies.

(b) The provisions of FAR 36.209 also do not apply to subcontractors whose input during the design phase does not substantially affect the course of the design work.

(c) Approval under FAR 36.209 is not required for subcontractors under paragraph (a) or (b) of this section. Approval for all other subcontractors and prime contractors may be granted by the CCO. In reviewing requests for approval, the RAD shall consider factors such as the availability of other firms to perform the necessary construction or Superfund remedial action work, the estimated cost to the Government, and the policy of the Agency to promote the use of innovative technology.

[55 FR 49283, Nov. 27, 1990, as amended at 59 FR 18977, Apr. 21, 1994]

Subpart 1536.5—Contract Clauses**1536.521 Specifications and drawings for construction.**

The Contracting Officer shall insert the clause at 1552.236-70, Samples and Certificates, in solicitations and contracts when a fixed price construction contract is expected to exceed the small purchase limitation. The clause may be inserted in solicitations and contracts when the contract is expected to be within the small purchase limitation.

Subpart 1536.6—Architect-Engineer Services**1536.602 Selection of firms for architect-engineer contracts.****1536.602-2 Establishment of evaluation boards.**

(a) The Environmental Protection Agency Architect-Engineer Evaluation Board is established as a central permanent Board located at Headquarters EPA under authority delegated to the Director, Office of Acquisition Management. The Board shall perform all architect-engineer evaluations on an agency-wide basis. The Agency Board

shall be composed of not less than three nor more than five voting members and one non-voting advisory member from the contracting office. The following constitutes the minimum composition of the Architect-Engineer Evaluation Board:

(1) *Member and Chairperson.* Chief, Engineering, Planning, and Architecture Branch, Facilities Management and Services Division or his/her designee;

(2) *Member.* A professional engineer or architect from EPA to be designated by the Chairperson;

(3) *Member.* A program official initiating the requirement or a designated representative; and

(4) *Advisory Member.* A Contracting Officer or his/her representative.

(b) The Chief of the Contracting Office (CCO) is delegated the authority to appoint either one or two additional voting members as may be appropriate for a particular project.

(c) In the event of an emergency or extended absence, a member may designate, in writing, with the concurrence of the Chairperson, an alternate experienced in architecture, engineering, or construction to serve in his/her absence.

(d) The duties of the advisory member shall include, but not be limited to, the following:

(1) Assuring that the criteria set forth in the public notice are applied in the evaluation process; and

(2) Assuring that actions taken during the evaluation process do not compromise subsequent procurement actions.

[59 FR 18977, Apr. 21, 1994]

PART 1537—SERVICE CONTRACTING**Subpart 1537.1—Service Contracts—General**

Sec.

1537.110 Solicitation provisions and contract clauses.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8864, Mar. 8, 1984, unless otherwise noted.

**Subpart 1537.1—Service
Contracts—General**

**1537.110 Solicitation provisions and
contract clauses.**

The following clauses are prescribed for service contracts. They may also be used in research and development contracts when applicable (see 1535.007-70).

(a) The Contracting Officer shall insert the clause at 1552.237-70, Contract Publication Review Procedures, in solicitations and contracts when the products of the contract are subject to contract publication review.

(b) The Contracting Officer shall insert the clause at 1552.237-71, Technical Direction, in cost-reimbursement type solicitations and contracts.

(c) The Contracting Officer shall insert the clause at 1552.237-72, Key Personnel, in solicitations and contracts when it is necessary for contract performance to identify Contractor key personnel.

(d) The Contracting Officer shall insert the clause at 1552.237-73, Consultant Services and Consent, in solicita-

tions and contracts where the services of consultants are required.

(e) The Contracting Officer shall insert the clause at 1552.237-74, Publicity, in solicitations and contracts pertaining to the removal or remedial activities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

(f) The Contracting Officer shall insert the clause at 1552.237-75, Paperwork Reduction Act, in solicitations and contracts requiring the collection of identical information from (10) or more public respondents.

(g) To ensure that Agency contracts are administered so as to avoid creating an improper employer-employee relationship, contracting officers shall insert the contract clause at 48 CFR 1552.237-76, "Government-Contractor Relations", in all solicitations and contracts for non-personal services that exceed the simplified acquisition threshold.

[49 FR 8864, Mar. 8, 1984, as amended at 64 FR 30444, June 8, 1999]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1542—CONTRACT ADMINISTRATION

Subpart 1542.7—Indirect Cost Rates

Sec.

1542.703-2 Certificate of indirect costs.

1542.705 Final indirect cost rates.

1542.705-70 Solicitation and contract clause.

Subpart 1542.12—Novation and Change of Name Agreements

1542.1200 Scope of subpart.

1542.1202 Responsibility for executing agreements.

1542.1203 Processing agreements.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8865, Mar. 8, 1984, unless otherwise noted.

Subpart 1542.7—Indirect Cost Rates

1542.703-2 Certificate of indirect costs.

The Head of the Contracting Activity may waive the certification requirement set forth in FAR 42.703-2.

[61 FR 57339, Nov. 6, 1996]

1542.705 Final indirect cost rates.

The EPA shall use the Contracting Officer determination procedure for all business units for which it shall be required to negotiate final indirect cost rates.

1542.705-70 Solicitation and contract clause.

The Contracting Officer shall insert the clause in 1552.242-70, Indirect Costs, in solicitations and contracts where indirect costs apply, unless contracting with an educational institution where there are approved predetermined final indirect cost rates.

[62 FR 33573, June 20, 1997]

Subpart 1542.12—Novation and Change of Name Agreements

1542.1200 Scope of subpart.

This subpart implements FAR subpart 42.12 and provides policies and pro-

cedures for executing and processing novation and change-of-name agreements.

1542.1202 Responsibility for executing agreements.

(a) Any EPA contracting office upon being notified of a successor in interest to, or change of name of, one of its Contractors shall promptly report such information by memorandum to the Director, Policy, Training and Oversight Division (POTD).

(b) To avoid duplication of effort on the part of EPA contracting offices in preparing and executing agreements to recognize a change of name or successor in interest, only one supplemental agreement will be prepared to effect necessary changes for all contracts between EPA and the Contractor involved. The Chief of the Procurement Policy Branch, Policy, Training and Oversight Division (PTOD), will, in each case, designate the Contracting Office responsible for taking all necessary and appropriate action with respect to either recognizing or not recognizing a successor in interest, or recognizing a change of name agreement.

[49 FR 8865, Mar. 8, 1984, as amended at 55 FR 24580, June 18, 1990; 59 FR 18977, Apr. 21, 1994]

1542.1203 Processing agreements.

(a) The responsible contracting office shall:

(1) Obtain from the Contractor a list of all affected contracts, the names and addresses of the contracting offices responsible for these contracts, and the required documentary evidence.

(2) Verify the accuracy of the list of contracts through the Contract Information System.

(3) Draft and execute a supplemental agreement to one of the contracts affected but covering all applicable outstanding and incomplete contracts affected by the transfer of assets or change of name. A supplemental agreement number need not be obtained for contracts other than for the one under which the supplemental agreement is written. The supplemental agreement

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will contain a list of the contracts affected and, for distribution purposes, the names and addresses of the contracting offices having contracts subject to the supplemental agreement.

(b) Agreements and supporting documents covering successors in interest shall be reviewed for legal sufficiency by legal counsel.

(c) After execution of the supplemental agreement, the designated office shall forward an authenticated copy of the supplemental agreement to the Director, Policy, Training and Oversight Division, and to each affected contract office.

[49 FR 8865, Mar. 8, 1984, as amended at 59 FR 18977, Apr. 21, 1994]

PART 1545—GOVERNMENT PROPERTY

Subpart 1545.1—General

Sec.

1545.106 Government property clauses.

Subpart 1545.3—Providing Government Property to Contractors

1545.309 Providing Government production and research property under special restrictions.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8866, Mar. 8, 1984, unless otherwise noted.

Subpart 1545.1—General

1545.106 Government property clauses.

(a) In accordance with 1523.303–71, the Contracting Officer shall insert the contract clause at 1552.245–70 when it is anticipated that a Contractor will use Government-furnished or Contractor-acquired property in the cleanup of hazardous or toxic substances in the environment.

(b) The Contracting Officer shall insert the contract clause at 1552.245–71, Government-Furnished Data, in any contract in which the Government is to furnish data to the Contractor. The data to be provided shall be identified in the clause.

(c) The Contracting Officer shall insert the contract clause at 1552.245–72,

Fabrication or Acquisition of Non-expendable Property, in all cost-reimbursement type contracts or contracts with cost-reimbursement portions.

[49 FR 8866, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

Subpart 1545.3—Providing Government Property to Contractors

1545.309 Providing Government production and research property under special restrictions.

Government production and research property, other than foundations and similar improvements necessary for installing special tooling, special test equipment, or plant equipment, shall not be installed or constructed on land not owned by the Government in such fashion as to be nonseverable unless the contract under which the property is provided contains—

(a) One of the provisions in FAR 45.309(a);

(b) A requirement that the Government will have the right to abandon in place all nonseverable Government property provided; and

(c) A requirement that the Government will not have any obligation to disassemble or remove the property or to restore or to rehabilitate the premises on which the property is located.

PART 1546—QUALITY ASSURANCE

Subpart 1546.2—Contract Quality Requirements

Sec.

1546.201 General.

Subpart 1546.7—Warranties

1546.704 Authority for use of warranties.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8867, Mar. 8, 1984, unless otherwise noted.

Subpart 1546.2—Contract Quality Requirements

1546.201 General.

(a) The Contracting Officer shall ensure that Procurement Request/Orders (EPA Form 1900–8) in excess of \$25,000

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be accompanied by a Quality Assurance (QA) review form for those acquisitions in the object classifications prescribed in chapter 2 of the "Contracts Management Manual" which covers procurement request preparation.

(b) Where the QA review form provides for the submission of a QA program plan in an offeror's proposal, the Contracting Officer shall use the provision shown in 1552.246-70 in the solicitation.

(c)(1) The Contracting Officer shall include the provision contained in 1552.246-71 in the solicitation when a QA project plan is required as part of the proposal submission. The QA project plan is a specific delineation of an offeror's approach for accomplishing

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the QA specification in a Statement of Work.

(2) When a QA project plan is not a required part of the technical proposal, the Contracting Officer may require the QA project plan as a deliverable under the contract by use of the clause in 1552.246-72.

Subpart 1546.7—Warranties

1546.704 Authority for use of warranties.

The Contracting Officer shall ensure that the use of a warranty clause in a contract has the concurrence of the Project Officer.

PART 1548—VALUE ENGINEERING [RESERVED]

SUBCHAPTER H—CLAUSES AND FORMS

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1552.2—Texts of Provisions and Clauses

Sec.

- 1552.203-70 Current/former agency employee involvement certification.
- 1552.203-71 Display of EPA Office of Inspector General Hotline Poster.
- 1552.208-70 Printing.
- 1552.209-70 Organizational conflict of interest notification.
- 1552.209-71 Organizational conflicts of interest.
- 1552.209-72 Organizational conflict of interest certification.
- 1552.209-73 Notification of conflicts of interest regarding personnel.
- 1552.209-74 Limitation of future contracting.
- 1552.209-75 Annual certification.
- 1552.209-76 Contractor performance evaluations.
- 1552.210-71 [Reserved]
- 1552.210-73—1552.210-74 [Reserved]
- 1552.211-70 Reports of work.
- 1552.211-72 Monthly progress report.
- 1552.211-73 Level of effort—cost-reimbursement term contract.
- 1552.211-74 Work assignments.
- 1552.211-75 Working files.
- 1552.211-76 Legal analysis.
- 1552.211-77 Final reports.
- 1552.211-78 Management consulting services.
- 1552.211-79 Compliance with EPA Policies for Information Resources Management.
- 1552.213-70 Notice to suppliers of equipment.
- 1552.214-71 Contract award—other factors—formal advertising.
- 1552.215-70 EPA source evaluation and selection procedures—negotiated procurements.
- 1552.215-71 Evaluation factors for award.
- 1552.215-72 Instructions for the preparation of proposals.
- 1552.215-73 General financial and organizational information.
- 1552.215-74 Advanced understanding—uncompensated time.
- 1552.215-75 [Reserved]
- 1552.215-76 General financial and organizational information.
- 1552.216-70 Award fee.
- 1552.216-71 Date of incurrence of cost.
- 1552.216-72 Ordering—by designated ordering officers.
- 1552.216-73 Fixed rates for services—indefinite delivery/indefinite quantity contract.
- 1552.216-74 Payment of fee.
- 1552.216-75 Base fee and award fee proposal.
- 1552.216-76 Estimated cost and cost-sharing.
- 1552.217-70 Evaluation of contract options.
- 1552.217-71 Option to extend the term of the contract—cost-type contract.
- 1552.217-72 Option to extend the term of the contract—cost-plus-award-fee contract.
- 1552.217-73 Option for increased quantity—cost-type contract.
- 1552.217-74 Option for increased quantity—cost-plus-award-fee contract.
- 1552.217-75 Option to extend the effective period of the contract—time and materials or labor hour contract.
- 1552.217-76 Option to extend the effective period of the contract—indefinite delivery/indefinite quantity contract.
- 1552.223-70 Protection of human subjects.
- 1552.224-70 Social security numbers of consultants and certain sole proprietors and Privacy Act statement.
- 1552.227-76 Project employee confidentiality agreement.
- 1552.229-70 State and local taxes.
- 1552.232-70 Submission of invoices.
- 1552.232-71—1552.232-72 [Reserved]
- 1552.232-73 Payments—fixed rate services contract.
- 1552.233-70 Notice of filing requirements for agency protests.
- 1552.235-70 Screening business information for claims of confidentiality.
- 1552.235-71 Treatment of confidential business information.
- 1552.235-72 [Reserved]
- 1552.235-73 Access to Federal Insecticide, Fungicide, and Rodenticide Act Confidential business information (Apr 1996).
- 1552.235-74 [Reserved]
- 1552.235-75 Access to Toxic Substances Control Act confidential business information (Apr 1996).
- 1552.235-76 Treatment of confidential business information (Apr 1996).
- 1552.235-77 Data Security for Federal Insecticide, Fungicide and Rodenticide Act Confidential Business Information (December 1997).
- 1552.235-78 Data Security for Toxic Substances Control Act Confidential Business Information (December 1997).
- 1552.235-79 Release of contractor confidential business information (Apr 1996).
- 1552.236-70 Samples and certificates.
- 1552.237-70 Contract publication review procedure.
- 1552.237-71 Technical direction.
- 1552.237-72 Key personnel.
- 1552.237-73 Consultant services and consent.
- 1552.237-74 Publicity.
- 1552.237-75 Paperwork Reduction Act.
- 1552.237-76 Government-Contractor Relations.

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1552.239-103 Acquisition of Energy Star compliant microcomputers, including personal computers, monitors and printers.

1552.242-70 Indirect costs.

1552.245-70 Decontamination of government property.

1552.245-71 Government-furnished data.

1552.245-72 Fabrication or acquisition of nonexpendable property.

1552.246-70 Quality Assurance (QA) Program Plan.

1552.246-71 Quality Assurance (QA) Project Plan.

1552.246-72 Quality Assurance (QA) Project Plan documentation.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8867, Mar. 8, 1984, unless otherwise noted.

Subpart 1552.2—Texts of Provisions and Clauses

1552.203-70 Current/former agency employee involvement certification.

As prescribed in 1503.603, insert the following solicitation provision in all EPA solicitation documents for sole source acquisitions.

CURRENT/FORMER AGENCY EMPLOYEE INVOLVEMENT CERTIFICATION (APR 1984)

The offeror (quoter) hereby certifies that:

(a) He is [] is not [] a former regular or special EPA employee whose EPA employment terminated within one year prior to submission of this offer (quote).

(b) He does [] does not [] employ or propose to employ a current/former regular or special EPA employee whose EPA employment terminated within one year prior to submission of this offer (quote) and who has been or will be involved, directly or indirectly, in developing or negotiating this offer (quote) for the offeror (quoter), or in the management, administration or performance of any contract resulting from this offer (quote).

(c) He does [] does not [] employ or propose to employ as a consultant or subcontractor under any contract resulting from this offer (quote) a current/former regular or special EPA employee whose EPA employment terminated within one year prior to submission of this offer (quote).

(d) A former regular or special EPA employee whose EPA employment terminated within one year prior to submission of this offer (quote) or such former employee's spouse or minor child does [] does not [] own or substantially own or control the offeror's (quoter's) firm.

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(e) See EPAAR part 1503 for definitions of the terms "regular" and "special employee."

(End of provision)

[49 FR 8867, Mar. 8, 1984, as amended at 50 FR 14360, Apr. 11, 1985]

1552.203-71 Display of EPA Office of Inspector General Hotline Poster.

As prescribed in 1503.500-72, insert the following clause in all contracts valued at \$1,000,000 or more including all contract options.

DISPLAY OF EPA OFFICE OF INSPECTOR GENERAL HOTLINE POSTER (AUG 2000)

(a) For EPA contracts valued at \$1,000,000 or more including all contract options, the contractor shall prominently display EPA Office of Inspector General Hotline posters in contractor facilities where the work is performed under the contract.

(b) Office of Inspector General hotline posters may be obtained from the EPA Office of Inspector General, ATTN: OIG Hotline (2443), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, or by calling (202) 260-5113.

(c) The Contractor need not comply with paragraph (a) of this clause if it has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and provided instructions that encourage employees to make such reports.

[65 FR 57103, Sept. 21, 2000]

EFFECTIVE DATE NOTE: At 65 FR 57103, Sept. 21, 2000, §1552.203-71 was added, effective Nov. 20, 2000.

1552.208-70 Printing.

As prescribed in 1508.870, insert the following contract clause in all type contracts which require printing, duplication, binding, reproduction, and related services and are subject to the provisions of the Government Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States.

PRINTING (APR 1984)

Unless otherwise specified in this contract, the Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000

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units of only one page, or less than 25,000 units in the aggregate of multiple pages, such pages not exceeding a maximum image size of 10¾ by 14¾ inches, will not be deemed to be printing.

(End of clause)

1552.209-70 Organizational conflict of interest notification.

As prescribed in 1509.507-1(b) insert the following solicitation provision in all solicitations.

ORGANIZATIONAL CONFLICT OF INTEREST NOTIFICATION (APR 1984)

(a) The prospective Contractor certifies, to the best of its knowledge and belief, that it is not aware of any information bearing on the existence of any potential organizational conflict of interest. If the prospective Contractor cannot so certify, it shall provide a disclosure statement in its proposal which describes all relevant information concerning any past, present, or planned interests bearing on whether it (including its chief executives and directors, or any proposed consultant or subcontractor) may have a potential organizational conflict of interest.

(b) Prospective Contractors should refer to FAR subpart 9.5 and EPAAR part 1509 for policies and procedures for avoiding, neutralizing, or mitigating organizational conflicts of interest.

(c) If the Contracting Officer determines that a potential conflict exists, the prospective Contractor shall not receive an award unless the conflict can be avoided or otherwise resolved through the inclusion of a special contract clause or other appropriate means. The terms of any special clause are subject to negotiation.

(End of provision)

[49 FR 8867, Mar. 8, 1994, as amended at 59 FR 18620, Apr. 19, 1994; 62 FR 33573, June 20, 1997]

1552.209-71 Organizational conflicts of interest.

As prescribed in 1509.507-2, insert the following contract clause in all contracts except:

(a) When specific clauses are required per EPAAR part 1509;

(b) When the procurement is with another Federal agency (however, the provision is included in contracts with SBA and its subcontractor under the 8(a) program); and

(c) When the procurement is accomplished through simplified acquisition procedures, use of the clause is optional.

ORGANIZATIONAL CONFLICTS OF INTEREST (MAY 1994)

(a) The Contractor warrants that, to the best of the Contractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as defined in FAR subpart 9.5, or that the Contractor has disclosed all such relevant information.

(b) Prior to commencement of any work, the Contractor agrees to notify the Contracting Officer immediately that, to the best of its knowledge and belief, no actual or potential conflict of interest exists or to identify to the Contracting Officer any actual or potential conflict of interest the firm may have. In emergency situations, however, work may begin but notification shall be made within five (5) working days.

(c) The Contractor agrees that if an actual or potential organizational conflict of interest is identified during performance, the Contractor will immediately make a full disclosure in writing to the Contracting Officer. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neutralize the actual or potential conflict of interest. The Contractor shall continue performance until notified by the Contracting Officer of any contrary action to be taken.

(d) Remedies—The EPA may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Contractor was aware of a potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose it or misrepresented relevant information to the Contracting officer, the Government may terminate the contract for default, debar the Contractor from Government contracting, or pursue such other remedies as may be permitted by law or this contract.

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Contracting Officer.

(End of clause)

ALTERNATE I

Contracts for other than Superfund work shall include Alternate I in this clause in lieu of paragraph (e).

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder provisions which shall conform substantially to the language of this clause, including this paragraph, unless otherwise authorized by the contracting officer.

[49 FR 8867, Mar. 8, 1994, as amended at 59 FR 18620, Apr. 19, 1994; 61 FR 57339, Nov. 6, 1996; 63 FR 46899, Sept. 3, 1998]

1552.209-72 Organizational conflict of interest certification.

As prescribed in 1509.507-1(b), insert the following provision in all solicitation documents when applicable.

ORGANIZATIONAL CONFLICT OF INTEREST CERTIFICATION (APR 1984)

The offeror [] is [] is not aware of any information bearing on the existence of any potential organizational conflict of interest. If the offeror is aware of information bearing on whether a potential conflict may exist, the offeror shall provide a disclosure statement describing this information. (See section L of the solicitation for further information.)

(End of provision)

[49 FR 8867, Mar. 8, 1994, as amended at 59 FR 18620, Apr. 19, 1994]

1552.209-73 Notification of conflicts of interest regarding personnel.

As prescribed in 1509.507-2(b) insert the following clause:

NOTIFICATION OF CONFLICTS OF INTEREST REGARDING PERSONNEL (MAY 1994)

(a) In addition to the requirements of the contract clause entitled "Organizational Conflicts of Interest," the following provisions with regard to employee personnel performing under this contract shall apply until the earlier of the following two dates: the termination date of the affected employee(s) or the expiration date of the contract.

(b) The Contractor agrees to notify immediately the EPA Project Officer and the Contracting Officer of (1) any actual or potential personal conflict of interest with regard to any of its employees working on or having access to information regarding this con-

tract, or (2) any such conflicts concerning subcontractor employees or consultants working on or having access to information regarding this contract, when such conflicts have been reported to the Contractor. A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work.

(c) The Contractor agrees to notify each Project Officer and Contracting Officer prior to incurring costs for that employee's work when an employee may have a personal conflict of interest. In the event that the personal conflict of interest does not become known until after performance on the contract begins, the Contractor shall immediately notify the Contracting Officer of the personal conflict of interest. The Contractor shall continue performance of this contract until notified by the Contracting Officer of the appropriate action to be taken.

(d) The Contractor agrees to insert in any subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (d), unless otherwise authorized by the Contracting Officer.

(End of clause)

[59 FR 18620, Apr. 19, 1994]

1552.209-74 Limitation of future contracting.

As prescribed in 1509.507-2(c), insert the following clause or alternate:

LIMITATION OF FUTURE CONTRACTING (ARCS) (DEC 1997)

(a) The parties to this contract agree that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) The Contractor will be ineligible to enter into a contract for remedial action projects for which the Contractor has developed the statement of work or the solicitation package.

(c) The following applies when ARCS work is performed under this contract and when both ARCS work and Field Investigative Team (FIT) work are performed on the same site under this contract: Unless prior written approval is obtained from the cognizant EPA Contracting Officer, the Contractor, during

the life of the work assignment and for a period of five (5) years after the completion of the work assignment, agrees not to enter into a contract with or to represent any party, other than EPA, with respect to: (1) any work relating to CERCLA activities which pertain to a site where the Contractor previously performed work for EPA under this contract; or (2) any work that may jeopardize CERCLA enforcement actions which pertain to a site where the Contractor previously performed work for the EPA under this contract.

(d) The following applies to FIT work at sites under this contract where only FIT work is performed, except for those sites where EPA has made a determination of "no further remedial action planned" (NFRAP): Unless prior written approval is obtained from the cognizant EPA Contracting Officer, the Contractor, during the life of the work assignment and for a period of three (3) years after the completion of the work assignment, agrees not to enter into a contract with or to represent any party, other than EPA, with respect to: (1) Any work relating to CERCLA activities which pertain to a site where the Contractor previously performed work for EPA under this contract; or (2) any work that may jeopardize CERCLA enforcement actions which pertain to a site where the Contractor previously performed work for the EPA under this contract.

(e) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless otherwise authorized by the Contracting Officer. Examples of such contracts include, but are not limited to, Superfund Management and Analytical support contracts, and Superfund Technical and Analytical support contracts.

(f) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk. Therefore, no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(g) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure.

(h) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services, including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (h) unless otherwise authorized by the Contracting Officer. The Contractor may request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

(i) If the Contractor seeks an expedited decision regarding its initial future contracting request, the Contractor may submit its request to both the Contracting Officer and the next administrative level within the Contracting Officer's organization.

(j) A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to the Contracting Officer or a request for review submitted to the next administrative level within the Contracting Officer's organization. An adverse determination resulting from a request for reconsideration by the Contracting Officer will not preclude the contractor from requesting a review by the next administrative level. Either a request for review or a request for reconsideration must be submitted to the appropriate level within 30 calendar days after receipt of the initial adverse determination.

(End of clause)

LIMITATION OF FUTURE CONTRACTING
ALTERNATE I (TCRR) (DEC 1997)

(a) The parties to this contract agree that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime Contractor or subcontractor under an ensuing EPA contract.

(c) Unless prior written approval is obtained from the cognizant EPA Contracting Officer, the Contractor, during the life of the

delivery order or tasking document and for a period of five (5) years after the completion of the delivery order or tasking document, agrees not to enter into a contract with or to represent any party, other than EPA, with respect to: (1) any work relating to CERCLA activities which pertain to a site where the Contractor previously performed work for EPA under this contract; or (2) any work that may jeopardize CERCLA enforcement actions which pertain to a site where the Contractor previously performed work for the EPA under this contract.

(d) During the life of this contract, including any options, the Contractor agrees that unless otherwise authorized by the Contracting Officer:

(1) It will not provide any Technical Assistance Team (TAT) type activities (e.g., TAT contracts) to EPA within the Contractor's Time Critical Rapid Response (TCRR) assigned geographical area(s), either as a prime contractor, subcontractor, or consultant.

(2) It will not provide any Technical Assistance Team (TAT) type activities (e.g., TAT contracts) to EPA as a prime contractor, subcontractor or consultant at a site where it has performed or plans to perform TCRR work.

(3) It will be ineligible for award of TAT type activities contracts for sites within its respective TCRR assigned geographical area(s) which result from a CERCLA administrative order, a CERCLA or RCRA consent decree or a court order.

(e) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless otherwise authorized by the Contracting Officer. Examples of such contracts include, but are not limited to, Superfund Management and Analytical support contracts, and Superfund Technical and Analytical support contracts.

(f) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk. Therefore, no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(g) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data re-

mains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure.

(h) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services, including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (h) unless otherwise authorized by the Contracting Officer. The Contractor may request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

(i) If the Contractor seeks an expedited decision regarding its initial future contracting request, the Contractor may submit its request to both the Contracting Officer and the next administrative level within the Contracting Officer's organization.

(j) A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to the Contracting Officer or a request for review submitted to the next administrative level within the Contracting Officer's organization. An adverse determination resulting from a request for reconsideration by the Contracting Officer will not preclude the Contractor from requesting a review by the next administrative level. Either a request for review or a request for reconsideration must be submitted to the appropriate level within 30 calendar days after receipt of the initial adverse determination.

(End of clause)

LIMITATION OF FUTURE CONTRACTING, ALTERNATE II (TAT) (DEC 1997)

(a) The parties to this contract agree that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime Contractor or subcontractor under an ensuing EPA contract.

(c) Unless prior written approval is obtained from the cognizant EPA Contracting Officer, the Contractor, during the life of the technical direction document and for a period of five (5) years after the completion of the technical direction document, agrees not to enter into a contract with or to represent any party, other than EPA, with respect to: (1) Any work relating to CERCLA activities which pertain to a site where the Contractor previously performed work for EPA under this contract; or (2) any work that may jeopardize CERCLA enforcement actions which pertain to a site where the Contractor previously performed work for the EPA under this contract.

(d) During the life of this contract, including any options, the Contractor agrees that unless otherwise authorized by the Contracting Officer:

(1) It will not provide to EPA cleanup services (e.g., Time Critical Rapid Response (TCRR) contracts) within the Contractor's Technical Assistance Team (TAT) assigned geographical area(s), either as a prime Contractor, subcontractor, or consultant.

(2) Unless an individual design for the site has been prepared by a third party, it will not provide to EPA as a prime contractor, subcontractor or consultant any remedial construction services at a site where it has performed or plans to perform TAT work. This clause will not preclude TAT contractors from performing construction management services under other EPA contracts.

(3) It will be ineligible for award of TCRR type activities contracts for sites within its respective TAT assigned geographical area(s) which result from a CERCLA administrative order, a CERCLA or RCRA consent decree or a court order.

(e) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless otherwise authorized by the Contracting Officer. Examples of such contracts include, but are not limited to, Superfund Management and Analytical support contracts, and Superfund Technical and Analytical support contracts.

(f) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk. Therefore, no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authoriza-

tion to enter into the contract is denied or approved.

(g) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure.

(h) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services, including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (h) unless otherwise authorized by the Contracting Officer. The Contractor may request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

(i) If the Contractor seeks an expedited decision regarding its initial future contracting request, the Contractor may submit its request to both the Contracting Officer and the next administrative level within the Contracting Officer's organization.

(j) A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to the Contracting Officer or a request for review submitted to the next administrative level within the Contracting Officer's organization. An adverse determination resulting from a request for reconsideration by the Contracting Officer will not preclude the Contractor from requesting a review by the next administrative level. Either a request for review or a request for reconsideration must be submitted to the appropriate level within 30 calendar days after receipt of the initial adverse determination.

(End of clause)

LIMITATION OF FUTURE CONTRACTING;
ALTERNATE III (ESAT) (DEC 1997)

(a) The parties to this contract agree that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of

work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime Contractor or subcontractor under an ensuing EPA contract.

(c) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless otherwise authorized by the Contracting Officer. Examples of such contracts include, but are not limited to, Superfund Management and Analytical support contracts, and Superfund Technical and Analytical support contracts.

(d) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure.

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services, including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (e) unless otherwise authorized by the Contracting Officer. The Contractor may request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

(f) If the Contractor seeks an expedited decision regarding its initial future contracting request, the contractor may submit its request to both the Contracting Officer and the next administrative level within the Contracting Officer's organization.

(g) A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to the Contracting Officer or a request for review submitted to the next administrative level within the Contracting Officer's organization. An adverse determination resulting from a request for reconsideration by the Contracting Officer will not preclude the Contractor from requesting a review by the next administrative level. Either a request for review or a request for recon-

sideration must be submitted to the appropriate level within 30 calendar days after receipt of the initial adverse determination.

(End of clause)

LIMITATION OF FUTURE CONTRACTING,
ALTERNATE IV (TES) (DEC 1997)

(a) The parties to this contract agree that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) During the performance period of this contract, the Contractor will be ineligible to enter into any contract for remedial planning and/or implementation projects for sites within the assigned geographical area(s) covered by this contract without the prior written approval of the EPA Contracting Officer.

(c) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime Contractor or subcontractor under an ensuing EPA contract.

(d) Unless prior written approval is obtained from the cognizant EPA Contracting Officer, the Contractor, during the life of the work assignment and for a period of seven (7) years after the completion of the work assignment, agrees not to enter into a contract with or to represent any party, other than EPA, with respect to: (1) Any work relating to CERCLA activities which pertain to a site where the Contractor previously performed work for EPA under this contract; or (2) any work that may jeopardize CERCLA enforcement actions which pertain to a site where the Contractor previously performed work for the EPA under this contract.

(e) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless otherwise authorized by the Contracting Officer. Examples of such contracts include, but are not limited to, Superfund Management and Analytical support contracts, and Superfund Technical and Analytical support contracts.

(f) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering

into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk. Therefore, no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(g) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure.

(h) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services, including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (h) unless otherwise authorized by the Contracting Officer. The Contractor may request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

(i) If the Contractor seeks an expedited decision regarding its initial future contracting request, the Contractor may submit its request to both the Contracting Officer and the next administrative level within the Contracting Officer's organization.

(j) A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to the Contracting Officer or a request for review submitted to the next administrative level within the Contracting Officer's organization. An adverse determination resulting from a request for reconsideration by the Contracting Officer will not preclude the Contractor from requesting a review by the next administrative level. Either a request for review or a request for reconsideration must be submitted to the appropriate level within 30 calendar days after receipt of the initial adverse determination.

(End of clause)

LIMITATION OF FUTURE CONTRACTING, ALTERNATE V (HEADQUARTERS SUPPORT) (MAY 1994)

(a) The parties to this contract agree that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this

clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime Contractor or subcontractor under an ensuing EPA contract.

(c) The Contractor, during the life of this contract, will be ineligible to enter into a contract with EPA to perform response action work (e.g., Alternative Remedial Contracting Strategy (ARCS), Time Critical Rapid Response (TCRR), Technical Assistance Team (TAT), and Technical Enforcement Support (TES) contracts), unless otherwise authorized by the Contracting Officer.

(d) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk. Therefore, no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(e) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure.

(f) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services, including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (f) unless otherwise authorized by the Contracting Officer. The Contractor may request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

(g) If the Contractor seeks an expedited decision regarding its initial future contracting request, the Contractor may submit its request to both the Contracting Officer

and the next administrative level within the Contracting Officer's organization.

(h) A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to the Contracting Officer or a request for review submitted to the next administrative level within the Contracting Officer's organization. An adverse determination resulting from a request for reconsideration by the Contracting Officer will not preclude the Contractor from requesting a review by the next administrative level. Either a request for review or a request for reconsideration must be submitted to the appropriate level within 30 calendar days after receipt of the initial adverse determination.

(End of clause)

LIMITATION OF FUTURE CONTRACTING;
ALTERNATE VI (SITE SPECIFIC) (DEC 1997)

(a) The parties to this contract agree that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime contractor or subcontractor under an ensuing EPA contract.

(c) Unless prior written approval is obtained from the cognizant EPA Contracting Officer, the Contractor, during the life of the contract and for a period of five (5) years after the expiration of the contract agrees not to enter into a contract with or to represent any party, other than EPA, with respect to: (1) any work relating to CERCLA activities which pertain to the site where the Contractor previously performed work for EPA under this contract; or (2) any work that may jeopardize CERCLA enforcement actions which pertain to the site where the Contractor previously performed work for the EPA under this contract.

(d) During the life of this contract, including any options, the Contractor agrees that unless otherwise authorized by the Contracting Officer:

(1) It will not provide any Technical Assistance Team (TAT) type activities (e.g., TAT contracts) to EPA on the site either as a prime contractor, subcontractor, or consultant.

(2) It will be ineligible for award of contracts pertaining to this site which result from a CERCLA administrative order, a

CERCLA or RCRA consent decree or a court order.

(e) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless otherwise authorized by the Contracting Officer. Examples of such contracts include, but are not limited to, Superfund Management and Analytical support contracts, and Superfund Technical and Analytical support contracts.

(f) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk. Therefore, no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(g) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure.

(h) Contractors who are performing nondiscretionary technical or engineering services, including construction work, may request a waiver from or modification to this clause by submitting a written request to the Contracting Officer. The Contracting Officer shall make the determination regarding whether to waive or modify the clause on a case-by-case basis.

(i) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services, including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (i) unless otherwise authorized by the Contracting Officer. The Contractor may request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

Environmental Protection Agency

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(j) If the Contractor seeks an expedited decision regarding its initial future contracting request, the Contractor may submit its request to both the Contracting Officer and the next administrative level within the Contracting Officer's organization.

(k) A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to the Contracting Officer or a request for review submitted to the next administrative level within the Contracting Officer's organization. An adverse determination resulting from a request for reconsideration by the Contracting Officer will not preclude the Contractor from requesting a review by the next administrative level. Either a request for review or a request for reconsideration must be submitted to the appropriate level within 30 calendar days after receipt of the initial adverse determination.

(End of clause)

[59 FR 18620, Apr. 19, 1994, as amended at 62 FR 5348, Feb. 5, 1997; 63 FR 692, Jan. 7, 1998; 65 FR 37292, June 14, 2000]

1552.209-75 Annual certification.

As prescribed in 1509.507-2(d), insert the following clause:

ANNUAL CERTIFICATION (MAY 1994)

The Contractor shall submit an annual conflict of interest certification to the Contracting Officer. In this certification, the Contractor shall certify annually that, to the best of the Contractor's knowledge and belief, all actual or potential organizational conflicts of interest have been reported to EPA. In addition, in this annual certification, the Contractor shall certify that it has informed its personnel who perform work under EPA contracts or relating to EPA contracts of their obligation to report personal and organizational conflicts of interest to the Contractor. Such certification must be signed by a senior executive of the company and submitted in accordance with instructions provided by the Contracting Officer. The initial certification shall cover the one-year period from the date of contract award, and all subsequent certifications shall cover successive annual periods thereafter, until expiration or termination of the contract. The certification must be received by the Contracting Officer no later than 45 days after the close of the certification period covered.

(End of clause)

[59 FR 18623, Apr. 19, 1994. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997]

1552.209-76 Contractor performance evaluations.

As prescribed in section 1509.170-1, insert the following clause in all applicable solicitations and contracts.

CONTRACTOR PERFORMANCE EVALUATIONS (MAY 1999)

The contracting officer shall complete a Contractor Performance Report (Report) within ninety (90) business days after the end of each 12 months of contract performance (interim Report) or after the last 12 months (or less) of contract performance (final Report) in accordance with EPAAR 1509.170-5. The contractor shall be evaluated based on the following ratings and performance categories:

Ratings: 0 = unsatisfactory, 1 = poor, 2 = fair, 3 = good, 4 = excellent, 5 = outstanding.

Performance Categories:

Quality: Compliance with contract requirements; accuracy of reports; effectiveness of personnel; and technical excellence.

Rating

0—Contractor is not in compliance and is jeopardizing achievement of contract objectives

1—Major problems have been encountered

2—Some problems have been encountered

3—Minor inefficiencies/errors have been identified

4—Contractor is in compliance with contract requirements and/or delivers quality products/services

5—The contractor has demonstrated an outstanding performance level that justifies adding a point to the score. It is expected that this rating will be used in those circumstances when contractor performance clearly exceeds the performance level described as "Excellent."

Cost Control: Record of forecasting and controlling target costs; current, accurate and complete billings; relationship of negotiated costs to actuals; cost efficiencies.

Rating

0—Contractor is unable to manage costs effectively

1—Contractor is having major difficulty managing costs effectively

2—Contractor is having some problems managing costs effectively

3—Contractor is usually effective in managing costs

4—Contractor is effective in managing costs and submits current, accurate, and complete billings

5—The contractor has demonstrated an outstanding performance level that justifies adding a point to the score. It is expected that this rating will be used in those circumstances when contractor performance

clearly exceeds the performance level described as "Excellent."

Timeliness of Performance: Met interim milestones; reliability; responsive to technical direction; completed on time, including wrap-up and contract administration; met delivery schedules; no liquidated damages assessed.

Rating

- 0—Contractor delays are jeopardizing performance of contract objectives
- 1—Contractor is having major difficulty meeting milestones and delivery schedule
- 2—Contractor is having some problems meeting milestones and delivery schedule
- 3—Contractor is usually effective in meeting milestones and delivery schedule
- 4—Contractor is effective in meeting milestones and delivery schedule
- 5—The contractor has demonstrated an outstanding performance level that justifies adding a point to the score. It is expected that this rating will be used in those circumstances when contractor performance clearly exceeds the performance level described as "Excellent."

Business Relations: Effective management, including subcontracts; reasonable/cooperative behavior; responsive to contract requirements; notification of problems; flexibility; pro-active versus reactive; effective small/small disadvantage business subcontracting program.

Rating

- 0—Response to inquiries, technical/service/administrative issues is not effective
- 1—Response to inquiries, technical/service/administrative issues is marginally effective
- 2—Response to inquiries, technical/service/administrative issues is somewhat effective
- 3—Response to inquiries, technical/service/administrative issues is usually effective
- 4—Response to inquiries, technical/service/administrative issues is effective
- 5—The contractor has demonstrated an outstanding performance level that justifies adding a point to the score. It is expected that this rating will be used in those circumstances when contractor performance clearly exceeds the performance level described as "Excellent."

(a) The contracting officer shall initiate the process for completing interim Reports within five (5) business days after the end of each 12 months of contract performance by requesting the project officer to evaluate contractor performance for the interim Report. In addition, the contracting officer shall initiate the process for completing final Reports within five (5) business days after the last 12 months (or less) of contract performance by requesting the project officer

to evaluate contractor performance for the final Report. The final Report shall cover the last 12 months (or less) of contract performance. Within thirty (30) business days after the project officer receives a request from the contracting officer to complete an evaluation, the project officer shall:

- (1) Complete a description of the contract requirements;
- (2) Evaluate contractor performance and assign a rating for quality, cost control, and timeliness of performance categories (including a narrative for each rating);
- (3) Provide any information regarding subcontracts, key personnel, and customer satisfaction;
- (4) Assign a recommended rating for the business relations performance category (including a narrative for the rating); and
- (5) Provide additional information appropriate for the evaluation or future evaluations.

(b) The contracting officer shall:

- (1) Ensure the accuracy of the project officer's evaluation by verifying that the information in the contract file corresponds with the designated project officer's ratings;
- (2) Assign a rating for the business relations performance category (including a narrative for the rating);
- (3) Concur with or revise the project officer's ratings after consultation with the project officer;
- (4) Provide any additional information concerning the quality, cost control, and timeliness of performance categories if deemed appropriate for the evaluation or future evaluations (if any), and provide any information regarding subcontracts, key personnel, and customer satisfaction; and
- (5) Forward the Report to the contractor within ten (10) business days after the contracting officer receives the project officer's evaluation.

(c) The contractor shall be granted thirty (30) business days from the date of the contractor's receipt of the Report to review and provide a response to the contracting officer regarding the contents of the Report. The contractor shall:

- (1) Review the Report;
- (2) Provide a response (if any) to the contracting officer on company letter head or electronically;
- (3) Complete contractor representation information; and
- (4) Forward the Report to the contracting officer within the designated thirty (30) business days.

(d) The contractor's response to the Report may include written comments, rebuttals (disagreements), or additional information. If the contractor does not respond to the Report within the designated thirty (30) business days, the specified ratings in the Report are deemed appropriate for the evaluation

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period. In this instance, the contracting officer shall complete the Agency review and sign the Report within three (3) business days after expiration of the specified 30 business days.

(e) If the contractor submits comments, rebuttals (disagreements), or additional information to the contracting officer which contests the ratings, the contracting officer, in consultation with the project officer, shall initially try to resolve the disagreement(s) with the contractor.

(f) If the disagreement(s) is (are) not resolved between the contractor and the contracting officer, the contracting officer shall provide a written recommendation to one level above the contracting officer for resolution as promptly as possible, but no later than five (5) business days after the contracting officer is made aware that the disagreement(s) has (have) not been resolved with the contractor. The individual who is one level above the contracting officer shall:

(1) Review the contracting officer's written recommendation; and

(2) Provide a written determination to the contracting officer for summary ratings (ultimate conclusion for ratings pertaining to the performance period being evaluated) within five (5) business days after the individual one level above the contracting officer receives the contracting officer's written recommendation.

(g) If the disagreement is resolved, the contracting officer shall complete the Agency review and sign the Report within three (3) business days after consultation.

(h) The contracting officer shall complete the Agency review and sign the Report within three (3) business days after the contracting officer receives a written determination for summary ratings from one level above the contracting officer.

(i) An interim or final Report is considered completed after the contracting officer signs the Report. The contracting officer must provide a copy of completed Reports (interim and final) to the contractor within two (2) business days after completion.

[64 FR 20204, Apr. 26, 1999]

1552.210-71 [Reserved]

1552.210-73—1552.210-74 [Reserved]

1552.211-70 Reports of work.

As prescribed in 1511.011-70, insert one of the contract clauses in this subsection when the contract requires the delivery of reports, including plans, evaluations, studies, analyses and manuals. The basic clause should be used when reports are specified in a contract attachment. Alternate I is to

be used to specify reports in the contract schedule.

REPORTS OF WORK (FEB 1998)

The Contractor shall prepare and deliver reports, including plans, evaluations, studies, analyses and manuals in accordance with Attachment . Each report

shall cite the contract number, identify the U.S. Environmental Protection Agency as the sponsoring agency, and identify the name of the contractor preparing the report.

The OMB clearance number for progress reports delivered under this contract is 2030-0005 with an expiration date of January 31, 2000.

(End of clause)

ALTERNATE I (FEB 1998)

The Contractor shall prepare and deliver the below listed reports, including plans, evaluations, studies, analyses and manuals to the designated addressees. Each report shall cite the contract number, identify the U.S. Environmental Protection Agency as the sponsoring agency, and identify the name of the contractor preparing the report.

The OMB clearance number for progress reports delivered under this contract is 2030-0005 with an expiration date of January 31, 2000. Required reports are:

Reports description	No. copies	Addressees
.....
.....
.....

(End of clause)

[49 FR 8867, Mar. 8, 1984. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997; 63 FR 10549, Mar. 4, 1998; 63 FR 46899, Sept. 3, 1998]

1552.211-72 Monthly progress report.

As prescribed in 1511.011-72, insert the following clause:

MONTHLY PROGRESS REPORT (JUN 1996)

(a) The Contractor shall furnish copies of the combined monthly technical and financial progress report stating the progress made, including the percentage of the project completed, and a description of the work accomplished to support the cost. If the work is ordered using work assignments or delivery orders, include the estimated percentage of task completed during the reporting period for each work assignment or delivery order.

(b) Specific discussions shall include difficulties encountered and remedial action taken during the reporting period, and anticipated activity with a schedule of

deliverables for the subsequent reporting period.

(c) The Contractor shall provide a list of outstanding actions awaiting Contracting Officer authorization, noted with the corresponding work assignment, such as subcontractor/consultant consents, overtime approvals, and work plan approvals.

(d) The report shall specify financial status at the contract level as follows:

(1) For the current reporting period, display the amount claimed.

(2) For the cumulative period and the cumulative contract life display: the amount obligated, amount originally invoiced, amount paid, amount suspended, amount disallowed, and remaining approved amount. The remaining approved amount is defined as the total obligated amount, less the total amount originally invoiced, plus total amount disallowed.

(3) Labor hours.

(i) A list of employees, their labor categories, and the numbers of hours worked for the reporting period.

(ii) For the current reporting period, display the expended direct labor hours and costs broken out by EPA contract labor hour category for the prime contractor and each subcontractor and consultant.

(iii) For the cumulative contract period and the cumulative contract life display: the negotiated, expended and remaining direct labor hours and costs broken out by EPA contract labor hour category for the prime contractor, and each subcontractor and consultant.

(iv) Display the estimated direct labor hours and costs to be expended during the next reporting period.

(4) Display the current dollar ceilings in the contract, net amount invoiced, and remaining amounts for the following categories: Direct labor hours, total estimated cost, award fee pool (if applicable), subcontracts by individual subcontractor, travel, program management, and Other Direct Costs (ODCs).

(5) Unbilled allowable costs. Display the total costs incurred but unbilled for the current reporting period and cumulative for the contract.

(6) Average cost of direct labor. Compare the actual average cost per hour to date with the average cost per hour of the approved work plans for the current contract period.

(e) The report shall specify financial status at the work assignment or delivery order level as follows:

(1) For the current period, display the amount claimed.

(2) For the cumulative period display: amount shown on workplan, or latest work assignment/delivery order amendment amount (whichever is later); amount currently claimed; amount paid; amount suspended; amount disallowed; and remaining

approved amount. The remaining approved amount is defined as: the workplan amount or latest work assignment or delivery order amount (whichever is later), less total amounts originally invoiced, plus total amount disallowed.

(3) Labor hours.

(i) A list of employees, their labor categories, and the number of hours worked for the reporting period.

(ii) For the current reporting period, display the expended direct labor hours and costs broken out by EPA contract labor hour category for the prime contractor and each subcontractor and consultant.

(iii) For the current reporting period, cumulative contract period, and the cumulative contract life display: the negotiated, expended and remaining direct labor hours and costs broken out by EPA contract labor hour category for the prime contractor and each subcontractor and consultant.

(iv) Display the estimated direct labor hours and costs to be expended during the next reporting period.

(v) Display the estimates of remaining direct labor hours and costs required to complete the work assignment or delivery order.

(4) Unbilled allowable costs. Display the total costs incurred but unbilled for the current reporting period and cumulative for the work assignment.

(5) Average cost of direct labor. Display the actual average cost per hour with the cost per hour estimated in the workplan.

(6) A list of deliverables for each work assignment or delivery order during the reporting period.

(f) This submission does not change the notification requirements of the "Limitation of Cost" or "Limitation of Funds" clauses requiring separate written notice to the Contracting Officer.

(g) The reports shall be submitted to the following addresses on or before the of each month following the first complete reporting period of the contract. See EPAAR 1552.232-70, Submission of Invoices, paragraph (e), for details on the timing of submittals. Distribute reports as follows:

No. of copies	Addressee
.....	Project Officer.
.....	Contracting Officer.

[61 FR 29317, June 10, 1996. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997]

1552.211-73 Level of effort—cost-reimbursement term contract.

As prescribed in 1511.011-73, insert the following contract clause in cost-reimbursement term contracts including

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cost contracts without fee, cost-sharing contracts, cost-plus-fixed-fee (CPFF) contracts, cost-plus-incentive-fee contracts (CPIF), and cost-plus-award-fee contracts (CPAF).

LEVEL OF EFFORT—COST-REIMBURSEMENT TERM CONTRACT (APR 1984)

(a) The Contractor shall perform all work and provide all required reports within the level of effort specified below. The Government hereby orders—direct labor hours for the base period, which represents the Government's best estimate of the level of effort to fulfill these requirements.

(b) Direct labor includes personnel such as engineers, scientists, draftsmen, technicians, statisticians, and programmers and not support personnel such as company management, typists, and key punch operators even though such support personnel are normally treated as direct labor by the Contractor. The level of effort specified in paragraph (a) includes Contractor, subcontractor, and consultant labor hours.

(c) If the Contractor provides less than 90 percent of the level of effort specified for the base period or any optional period ordered, an equitable downward adjustment of the fixed fee, if any, for that period will be made. The Government may require the Contractor to provide additional effort up to 110 percent of the level of effort for any period until the estimated cost for that period has been reached. However, this additional effort shall not result in any increase in the fixed fee, if any. If this is a cost-plus-incentive-fee (CPIF) contract, the term "fee" in this paragraph means "base fee and incentive fee." If this is a cost-plus-award-fee (CPAF) contract, the term "fee" in this paragraph means "base fee and award fee."

(d) If the level of effort specified to be ordered during a given base or option period is not ordered during that period, that level of effort may not be accumulated and ordered during a subsequent period.

(e) These terms and conditions do not supersede the requirements of either the "Limitation of Cost" or "Limitation of Funds" clauses.

(End of clause)

[49 FR 8867, Mar. 8, 1984. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997]

1552.211-74 Work assignments.

As prescribed in 1511.011-74, insert the following contract clause in cost-reimbursement type term form contracts when work assignments are to be used.

WORK ASSIGNMENTS (APR 1984)

(a) The contractor shall perform work under this contract as specified in written work assignments issued by the Contracting Officer.

(b) Each work assignment will include (1) a numerical designation, (2) the estimate of required labor hours, (3) the period of performance and schedule of deliverables, and (4) the description of the work.

(c) The Contractor shall acknowledge receipt of each work assignment by returning to the Contracting Officer a signed copy of the work assignment within calendar days after its receipt. The Contractor shall begin work immediately upon receipt of a work assignment. Within calendar days after receipt of a work assignment, the Contractor shall submit copies of a work plan to the Project Officer and copies to the Contracting Officer. The work plan shall include a detailed technical and staffing plan and a detailed cost estimate. Within calendar days after receipt of the work plan, the Contracting Officer will provide written approval or disapproval of it to the Contractor. If the Contractor has not received approval on a work plan within calendar days after its submission, the Contractor shall stop work on that work assignment. Also, if the Contracting Officer disapproves a work plan, the Contractor shall stop work until the problem causing the disapproval is resolved. In either case, the Contractor shall resume work only when the Contracting Officer finally approves the work plan.

(d) This clause does not change the requirements of the "Level of Effort" clause, nor the notification requirements of either the "Limitation of Cost" or "Limitation of Funds" clauses.

(e) Work assignments shall not allow for any change to the terms or conditions of the contract. Where any language in the work assignment may suggest a change to the terms or conditions, the Contractor shall immediately notify the Contracting Officer.

(End of clause)

Alternate I. As prescribed in 1512.104(b), modify the existing clause by adding the following paragraph (f) to the basic clause:

(f) Within 20 days of receipt of the work assignment or similar tasking document, the Contractor shall provide a conflict of interest certification. Where work assignments or similar tasking documents are issued under this contract for work on or directly related to a site, the Contractor is only required to provide a conflict of interest certification for the first work assignment issued for that site. For all subsequent work on that site under this contract, the Contractor has a continuing obligation to search and report

any actual or potential conflicts of interest, but no additional conflict of interest certifications are required.

Before submitting the conflict of interest certification, the contractor shall search its records accumulated, at a minimum, over the past three years immediately prior to the receipt of the work assignment or similar tasking document. In the COI certification, the Contractor must certify to the best of the Contractor's knowledge and belief, that all actual or potential organizational conflicts of interest have been reported to the Contracting Officer or that to the best of the Contractor's knowledge and belief, no actual or potential organizational conflicts of interest exist. In addition, the Contractor must certify that its personnel who perform work under this work assignment or relating to this work assignment have been informed of their obligation to report personal and organizational conflicts of interest to the Contractor. The certification shall also include a statement that the Contractor recognizes its continuing obligation to identify and report any actual or potential conflicts of interest arising during performance of this work assignment or other work related to this site.

Alternate II. As prescribed in 1512.104(b), modify the existing clause by adding the following paragraph (f) to the basic clause:

(f) Within 20 days of receipt of the work assignment or similar tasking document, the Contractor shall provide a conflict of interest certification. Where work assignments or similar tasking documents are issued under this contract for work on or directly related to a site, the Contractor is only required to provide a conflict of interest certification for the first work assignment issued for that site. For all subsequent work on that site under this contract, the Contractor has a continuing obligation to search and report any actual or potential conflicts of interest, but no additional conflict of interest certifications are required.

Before submitting the conflict of interest certification, the contractor shall initially search through all of its available records to identify any actual or potential conflicts of interest. During the first three years of this contract, the contractor shall search through all records created since the beginning of the contract plus the records of the contractor prior to the award of the contract until a minimum of three years of records are accumulated. Once three years of records have accumulated, prior to certifying, the contractor shall search its records accumulated, at a minimum, over the past three years immediately prior to the receipt of the work assignment or similar tasking document. In the certification, the Contractor must certify to the best of the Contractor's

knowledge and belief, that all actual or potential organizational conflicts of interest have been reported to the Contracting Officer or that to the best of the Contractor's knowledge and belief, no actual or potential organizational conflicts of interest exist. In addition, the Contractor must certify that its personnel who perform work under this work assignment or relating to this work assignment have been informed of their obligation to report personal and organizational conflicts of interest to the Contractor. The certification shall also include a statement that the Contractor recognizes its continuing obligation to identify and report any actual or potential conflicts of interest arising during performance of this work assignment or other work related to this site.

(End of clause)

[49 FR 8867, Mar. 8, 1994, as amended at 59 FR 18624, Apr. 19, 1994. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997]

1552.211-75 Working files.

As prescribed in 1511.011-75, insert the following clause in all applicable EPA contracts.

WORKING FILES (APR 1984)

The Contractor shall maintain accurate working files (by task or work assignment) on all work documentation including calculations, assumptions, interpretations of regulations, sources of information, and other raw data required in the performance of this contract. The Contractor shall provide the information contained in its working files upon request of the Contracting Officer.

(End of clause)

[49 FR 8867, Mar. 8, 1984. Redesignated at 55 FR 39622, Sept. 28, 1990, as amended at 21994, May 4, 1995. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997]

1552.211-76 Legal analysis.

As prescribed in 1511.011-76, insert this contract clause when it is determined that the contract involves legal analysis.

LEGAL ANALYSIS (APR 1984)

The Contractor shall furnish to the Project Officer one (1) copy of any draft legal analysis. The Government will provide a response to the Contractor within thirty (30) calendar days after receipt. The Contractor shall not

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finalize the analysis until the Government has given approval.

(End of clause)

[49 FR 8867, Mar. 8, 1984. Redesignated at 55 FR 39622, Sept. 28, 1990, as amended at 60 FR 21994, May 4, 1995. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997]

1552.211-77 Final reports.

As prescribed in 1511.011-77, insert this contract clause when a contract requires a draft and a final report.

FINAL REPORTS (APR 1984)

(a) "Draft Report"—The Contractor shall submit to the Project Officer copies of the draft final report on or before (date)

The Contractor shall furnish to the Contracting Officer a copy of the letter transmitting the draft. The draft shall be typed double-spaced or space-and-a-half and shall include all pertinent material required in the final report. The Government will review for approval or disapproval the draft and provide a response to the Contractor within calendar days after receipt. If the Government does not provide a response within the allotted review time, the Contractor immediately shall notify the Contracting Officer in writing.

(b) "Final Report"—The Contractor shall deliver a final report on or before the last day of the period of performance specified in the contract. Distribution is as follows:

No. of copies	Addressee
1	EPA Library.
1	Contracting Officer.
1	Project Officer.

(End of clause)

[49 FR 8867, Mar. 8, 1984. Redesignated at 55 FR 39622, Sept. 28, 1990, as amended at 60 FR 21994, May 4, 1995. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997]

1552.211-78 Management consulting services.

As prescribed in 1511.011-78, insert the following contract clause in all contracts for management consulting services.

MANAGEMENT CONSULTING SERVICES (APR 1985)

All reports containing recommendations to the Environmental Protection Agency shall include the following information on the

cover of each report: (a) Name and business address of the contractor; (b) contract number; (c) contract dollar amount; (d) whether the contract was subject to full and open competition or a sole source acquisition; (e) name of the EPA Project Officer and the EPA Project Officer's office identification and location; and (f) date of report.

(End of clause)

[50 FR 14360, Apr. 11, 1985; 50 FR 15425, Apr. 18, 1985. Redesignated at 55 FR 39622, Sept. 28, 1990, as amended at 60 FR 21994, May 4, 1995. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997]

1552.211-79 Compliance with EPA Policies for Information Resources Management.

As prescribed in 1511.011-79, insert the following clause:

COMPLIANCE WITH EPA POLICIES FOR INFORMATION RESOURCES MANAGEMENT (SEP 1991)

(a) *Definition.* Information Resources Management (IRM) is defined as any planning, budgeting, organizing, directing, training, promoting, controlling, and managing activities associated with the burden, collection, creation, use and dissemination of information. IRM includes both information itself, and the management of information and related resources such as personnel, equipment, funds, and technology. Examples of these services include but are not limited to the following:

(1) The acquisition, creation, or modification of a computer program or automated data base for delivery to EPA or use by EPA or contractors operating EPA programs.

(2) The analysis of requirements for, study of the feasibility of, evaluation of alternatives for, or design and development of a computer program or automated data base for use by EPA or contractors operating EPA programs.

(3) Services that provide EPA personnel access to or use of computer or word processing equipment, software, or related services.

(4) Services that provide EPA personnel access to or use of: Data communications; electronic messaging services or capabilities; electronic bulletin boards, or other forms of electronic information dissemination; electronic record-keeping; or any other automated information services.

(5) Services that are subject to the Brooks Act of 1965, as amended (Pub. L. 89-306).

(b) *General.* The Contractor shall perform any IRM related work under this contract in accordance with the IRM policies, standards and procedures set forth in this clause and noted below. Upon receipt of a work request (i.e. delivery order or work assignment), the

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Contractor shall check this listing of directives (see paragraph (d) for electronic access). The applicable directives for performance of the work request are those in effect on the date of issuance of the work request.

(1) IRM Policies, Standards and Procedures. The 2100 Series (2100-2199) of the Agency's Directive System contains the majority of the Agency's IRM policies, standards and procedures.

(2) Groundwater Program IRM Requirement. A contractor performing any work related to collecting Groundwater data; or developing or enhancing data bases containing Groundwater quality data shall comply with *EPA Order 7500.1A—Minimum Set of Data Elements for Groundwater*.

(3) EPA Computing and Telecommunications Services. *The Enterprise Technology Services Division (ETSD) Operational Directives Manual* contains procedural information about the operation of the Agency's computing and telecommunications services. Contractors performing work for the Agency's National Computer Center or those who are developing systems which will be operating on the Agency's national platforms must comply with procedures established in the Manual. (This document is only available through electronic access.)

(c) *Printed Documents*. Documents listed in (b)(1) and (b)(2) may be obtained from: U.S. Environmental Protection Agency Office of Administration Facilities Management and Services Division Distribution Section Mail Code: 3204 1200 Pennsylvania Ave., NW., Washington, D.C. 20460 Phone: (202) 260-5797

(d) *Electronic access*. (1) *Internet*. A complete listing, including full text, of documents included in the 2100 Series of the Agency's Directive System, as well as the two other EPA documents noted in this clause, is maintained on the EPA Public Access Server on the Internet. Gopher Access: *gopher.epa.gov* is the address to access the EPA Gopher. Select 'menu keyword search' from the menu and search on the term 'IRM Policy'. Look for IRM Policy, Standards and Guidance. World Wide Web Access: *http://www.epa.gov* is the address for the EPA's www homepage. From the homepage, search on the term 'IRM Policy' and look for IRM Policy, Standards and Guidance.

(2) *Dial-Up Modem*. All documents, including the listing, are available for browsing and electronic download through a dial-up modem. Dial (919) 558-0335 for access to the menu that contains the listing for EPA policies. Set the communication parameters to 8 data bits, no parity, 1 stop bit (8,N,1) Full Duplex, and the emulator to VT-100. The information is the same whether accessed through dial-up or the Internet. For technical assistance, call 1-800-334-2405.

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(End of Clause)

[56 FR 42236, Aug. 27, 1991, as amended at 61 FR 33693, June 28, 1996. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997; 65 FR 47325, Aug. 2, 2000]

1552.213-70 Notice to suppliers of equipment.

As prescribed in 1513.507(b), the Contracting Officer shall insert the following contract clause in orders for or lease of commercially available equipment.

NOTICE TO SUPPLIERS OF EQUIPMENT (APR 1984)

(a) It is the general policy of the Environmental Protection Agency that Contractor or vendor prescribed leases or maintenance agreements for equipment will NOT be executed.

(b) Performance in accordance with the terms and conditions of the vendor's commercial lease, or customer service maintenance agreement, unless specified in the Schedule, may render the vendor's performance unacceptable, thereby permitting the Government to apply such contractual remedies as may be permitted by law, regulation, or the terms of this order.

(End of clause)

[49 FR 8867, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1552.214-71 Contract award—other factors—formal advertising.

As prescribed in 1514.201-6(b), insert the following solicitation provision in invitations for bids (IFB) when it is appropriate to describe other factors that will be used in evaluating bids for award. This provision is used to describe the other factors mentioned in the solicitation provisions "Contract Award—Formal Advertising" (FAR 52.214-10), and "Contract Award—Construction" (FAR 52.214-19). All other evaluation provisions in the IFB (e.g., evaluation of options) should be cross-referenced in this provision. The other factors set forth in the provision should represent a consolidated statement of the exact basis upon which bids will be evaluated for award.

CONTRACT AWARD—OTHER FACTORS—FORMAL ADVERTISING (APR 1984)

The Government will award a contract resulting from this solicitation as stated in the

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“Contract Award” provision. The other factors that will be considered are:

when combined are significantly more important than cost or price.

(b) Evaluation factors and significant subfactors to determine quality of product or service:

(End of provision)

[End of provision]

1552.215-70 EPA source evaluation and selection procedures—negotiated procurements.

EVALUATION FACTORS FOR AWARD (AUG 1999)—ALTERNATE I (AUG 2000)

As prescribed in 1515.209(a), insert the following provision:

(a) The Government will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government cost or other factors considered. For this solicitation, all evaluation factors other than cost or price when combined are significantly less important than cost or price.

EPA SOURCE EVALUATION AND SELECTION PROCEDURES—NEGOTIATED PROCUREMENTS (AUG 1999)

(a) The Government will perform source selection in accordance with FAR Part 15 and the EPA Source Evaluation and Selection Procedures in EPAAR Part 1515 (48 CFR Part 1515). The significant features of this procedure are:

(b) Evaluation factors and significant subfactors to determine quality of product or service:

(1) The Government will perform either cost analysis or price analysis of the offeror's cost/business proposal in accordance with FAR Parts 15 and 31, as appropriate. In addition, the Government will also evaluate proposals to determine contract cost or price realism.

[End of provision]

Cost or price realism relates to an offeror's demonstrating that the proposed cost or price provides an adequate reflection of the offeror's understanding of the requirements of this solicitation, i.e., that the cost or price is not unrealistically low or unreasonably high.

EVALUATION FACTORS FOR AWARD, AUG 1999—ALTERNATE II, AUG 2000

(2) The Government will evaluate technical proposals as specified in 1552.215-71, Evaluation Factors for Award.

(a) The Government will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government cost or other factors considered. For this solicitation, all evaluation factors other than cost or price when combined are approximately equal to cost or price.

(b) In addition to evaluation of the previously discussed elements, the Government will consider in any award decision the responsibility factors set forth in FAR Part 9.

(b) Evaluation factors and significant subfactors to determine the quality of product or service:

(End of Provision)

[End of provision]

[61 FR 47067, Sept. 6, 1996, as amended at 61 FR 57339, Nov. 6, 1996; 64 FR 47415, Aug. 31, 1999]

EVALUATION FACTORS FOR AWARD, AUG 1999—ALTERNATE III, (AUG 2000)

1552.215-71 Evaluation factors for award.

As prescribed in 1515.209(a), insert one of the following provisions.

(a) The Government will make award to the offeror with the lowest-evaluated cost or price, whose proposal meets or exceeds the acceptability standards for non-cost factors. In the event that there are two or more technically acceptable, equal price (cost) offers, the Government will consider socioeconomic, environmental and other similar factors, as listed below in descending order of importance:

EVALUATION FACTORS FOR AWARD (AUG 1999)

(a) The Government will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government cost or other factors considered. For this solicitation, all evaluation factors other than cost or price

(b) Factors and significant subfactors for technical acceptability evaluation:

(c) Factors for past performance evaluation (optional):

[End of provision]

[64 FR 47415, Aug. 31, 1999]

1552.215-72 Instructions for the Preparation of Proposals.

As prescribed in 1515.408(a)(1) insert the following provision:

INSTRUCTIONS FOR THE PREPARATION OF
PROPOSALS (AUG 1999)

(a) Other than cost proposal instructions.

(1) Submit proposal for than cost factors as a separate part of the total proposal package. Omit all cost or pricing details from this proposal.

(2) Special proposal instructions:

(b) Cost or pricing proposal instructions.

The offeror shall prepare and submit cost or pricing information data and supporting attachments in accordance with Table 15-2 of FAR 15.408. In addition to a hard copy of the information, to expedite review of the proposal, submit a 3.5" high density IBM-compatible formatted computer disk containing the financial data required, if this information is available using a commercial spreadsheet program on a personal computer. Submit this information using LOTUS 1-2-3, if available. Identify which version of LOTUS used. If the offeror used another spreadsheet program, indicate the software program used to create this information. Offerors should include the formulas and factors used in calculating the financial data. Although submission of a computer disk will expedite review, failure to submit a disk will not affect consideration of the proposal.

(1) General—Submit cost or pricing information prepared in accordance with FAR Table 15-2, Instructions for Submitting Cost/Price Proposals When Cost or Pricing Information Are Required and the following:

(i) Clearly identify separate cost or pricing information associated with any:

(A) Options to extend the term of the contract;

(B) Options for the Government to order incremental quantities; and/or

(C) Major tasks, if required by the special instructions.

(ii) If the contract schedule includes a "Fixed Rate for Services" clause, please provide in the cost proposal a schedule dupli-

cating the format in the clause and include proposed fixed hourly rates per labor category for the base and any optional contract periods.

(iii) If the contract includes the clause at EPAAR 1552.232-73 "Payments—Fixed-Rate Services Contract," or the clause at FAR 52.232-7, "Payments Under Time and Materials and Labor-Hour Contracts," include in the cost proposal the estimated costs and burden rate to be applied to materials, other direct costs, or subcontracts. The Government will include these costs as part of its cost proposal evaluation.

(iv) If other divisions, subsidiaries, a parent or affiliated companies will perform work, provide the name and location of such affiliate and offeror's intercompany pricing policy. Separately identify costs and supporting data for each entity proposed.

(v) The realism of costs, including personnel compensation rates (including effective hourly rates due to uncompensated overtime) will be part of the proposal evaluation. Any reductions to proposed costs or differences between proposed and known EPA/DCAA recommended rates must be fully explained. If an offeror makes a reduction which makes its offer or portions of its offer below anticipated costs, the offeror shall identify where (i.e., which elements of costs) the proposed reductions will be made. Unsubstantiated rates may result in an upward or downward adjustment of the cost proposals to reflect more realistic costs. Based on this analysis, a projected cost for the offeror will be calculated to reflect the Government's estimate of the offeror's probable costs. Any inconsistency, whether real or apparent, between the promised performance and cost or price should be explained. The burden of proof for cost credibility rests with the offeror.

(2) Direct Labor.

(i) The direct technical labor hours (level-of-effort) appearing in the solicitation are for professional and technical labor only. These hours do not include management at a level higher than project management, e.g., corporate and day-to-day management, nor do they include clerical and support staff at a level lower than technician. If it is the offeror's normal practice to charge these types of costs as direct costs, include these costs along with an estimate of the directly chargeable labor-hours for these personnel. These direct charges are to be shown separately from the technical (level-of-effort) effort. If this type of effort is normally included in the offeror's indirect cost allocations, no estimate is required. However, direct charging of these on any resulting contract will not be allowed. Additionally the direct technical labor hours are the workable hours required by the Government and do not include release time (i.e., holidays, vacation, etc.) Submit the proposal utilizing the

labor categories and distribution of the level-of-effort specified in the solicitation. These are approximate distribution levels and do not necessarily represent the actual levels which may be experienced during contract performance.

(ii) Explain the basis of the proposed labor rates, including a complete justification for all judgmental factors used to develop weights applied to company's category or individual rates that comprise the rates for labor categories specified in the solicitation. This explanation should describe how technical approach coincides with the proposed costs. If the proposed direct labor rates are based on an average of the individuals proposed to work on the contract, provide a list of the individuals proposed and the hours associated with each individual in deriving the rates. If the proposed direct labor rates are based on an average of company category rates, identify and describe the labor categories and the percentages associated with each category in deriving the rates, explaining in detail the basis for the percentages assigned.

(iii) Describe for each labor category proposed, the company's qualifications and experience requirements. If individual rates are used, provide the employee's name. If specific individuals are identified in the technical proposal, correlate these individuals with the labor categories specified in the solicitation.

(iv) Provide a matrix summarizing the effort proposed, including the subcontracts, by professional and technical level specified in the solicitation.

(v) Indicate whether current rates or escalated rates are used. If escalation is included, state the degree (percent) and methodology. The methodology shall include the effective date of the base rates and the policy on salary reviews (e.g. anniversary date of employee or salary reviews for all employees on a specific date).

(vi) State whether any additional direct labor (new hire or temporary hires) will be required during the performance period of this acquisition. If so, state the number required, the professional or technical level and the methodology used to estimate proposed labor rates.

(vii) With respect to educational institutions, include the following information for those professional staff members whose salary is expected to be covered by a stipulated salary support agreement pursuant to OMB Circular A-21.

(A) Individual's name;

(B) Annual salary and the period for which the salary is applicable;

(C) List of other research Projects or proposals for which salaries are allocated, and the proportionate time charged to each; and

(D) Other duties, such as teaching assignments, administrative assignments, and

other institutional activities. Show the proportionate time charged to each. (Show proportionate time charges as a percentage of 100% of time for the entire academic year, exclusive of vacation or sabbatical leave.)

(viii) Uncompensated overtime. The decision to propose uncompensated overtime is the offeror's decision. Should the offeror, however, elect to propose uncompensated overtime, the offeror must propose a methodology that is consistent with their cost accounting practices and company policy. If proposed, provide an estimate of any uncompensated overtime proposed for exempt personnel working at the offeror's facilities. This estimate should identify the number of uncompensated labor hours and the percentage of compensated labor. Uncompensated labor hours are defined as hours for exempt personnel in excess of regular hours for a pay period which are actually worked and recorded in accordance with company policy. Provide a copy of the company policy on uncompensated overtime. Provide historical percentages of uncompensated overtime for the past three years. If proposed for subcontractors, provide separately with subcontractor information.

(ix) For labor rate contracts, for each fixed labor rate, offerors shall identify the basis for the loaded fixed hourly rate for each contract period for example, the rate might consist of the following cost elements: raw wage or salary rate, plus fringe benefits (if applicable), plus overhead rate (if applicable), plus G&A expense rate (if applicable), plus profit.

When determining the composite raw wage for a labor category, the offeror shall:

(A) provide in narrative form the basis for the raw wage for each labor category. If actual wages of current employees are used, the basis for the projections should be explained.

(B) If employees are subject to the Service Contract Act or Davis Bacon Act, they must be compensated at least at the minimum wage rate required by the applicable Wage Determination.

(3) Indirect costs (fringe, overhead, general, and administrative expenses).

(i) If the rates have been recently approved, include a copy of the rate agreement. If the agreement does not cover the projected performance period of the proposed effort, provide the rationale and any estimated rate calculations for the proposed performance period.

(ii) Submit supporting documentation for rates which have not been approved or audited. Indicate whether computations are based upon historical or projected data.

(iii) Provide actual pool expenses, base dollars, or hours (as applicable for the past five years). Include the actual indirect rates for the past five years including the indirect

rates proposed, the actual indirect rates experienced and, if available, the final negotiated rate. Indicate the amount of unallowable costs included in the historical data.

(iv) Offerors who propose indirect rates for new or substantially reorganized cost centers should consider offering to accept ceilings on the indirect rates at the proposed rates. Similarly, offerors whose subcontractors propose indirect rates for new or substantially reorganized cost centers should likewise consider offering to accept ceilings on the subcontractors' indirect rates at the proposed rates.

Note to paragraph (b)(3)(iv): The Government reserves the right to adjust an offeror's or its subcontractor's estimated indirect costs for evaluation purposes based on the Agency's judgment of the most probable costs up to the amount of any stated ceiling.

(v) If the employees are subject to the Service Contract Act or Davis Bacon Act, employees must receive the minimum level of benefits stated in the applicable Wage Determination.

(4) Travel expense.

(i) If the solicitation specifies the amount of travel costs, this amount is exclusive of any applicable indirect costs and fee.

(ii) If the solicitation does not specify the amount of travel costs, attach a schedule illustrating how travel was computed. Include a breakdown indicating number of trips, number of travelers, destinations from and to, purpose and cost, e.g., mileage, transportation costs, subsistence rates.

(5) Equipment, facilities and special equipment, including tooling.

(i) If direct charges for use of existing contractor equipment are proposed, provide a description of these items, including estimated usage hours, rates, and total costs.

(ii) If equipment purchases are proposed, provide a description of these items, and a justification as to why the Government should furnish the equipment or allow its purchase with contract funds. (Unless specified elsewhere in this solicitation, FAR 45.302-1 requires contractors to furnish all facilities in performance of contracts with certain limited exceptions.)

(iii) Identify Government-owned property in the possession of the offeror or proposed to be used in the performance of the contract, and the Government agency which has cognizance over the property.

(iv) Submit proposed rates or use charges for equipment, along with documentation to support those rates.

(v) If special purposes facilities or equipment are being proposed, provide a description of these items, details for the proposed costs including competitive prices, and justification as to why the Government should furnish the equipment or allow its purchase with contract funds.

(vi) If fabrication by the prime contractor is contemplated, include details of material, labor, and overhead.

(6) Other Direct Costs (ODC).

(i) If the solicitation specifies the amount of other direct costs, this amount is exclusive of any applicable indirect cost and fee.

(ii) If the amount is not specified in the solicitation, attach a schedule detailing how other direct costs were computed. Identify the major ODC items that under the accounting system would be a direct charge on any resulting contract.

(iii) If any of the cost elements identified as part of the specified other direct costs are recovered as an indirect cost, in accordance with the offeror's accounting system, those costs should not be included as a direct cost. Complete explanation of this adjustment and the contractor's practice should be provided.

(iv) Provide historical other direct costs dollars per level of effort hour on similar contracts or work assignments.

(7) Team Subcontracts. When the cost of a subcontract is substantial (5 percent of the total estimated contract dollar value or \$100,000, whichever is less), the offeror shall include the following subcontractor information:

(i) Provide details of subcontract costs in the same format as the prime contractor's costs. This detailed information may be provided separately to the EPA if the subcontractor does not wish to provide this data to the prime contractor. Cost data provided separately by a contractor must be received by the time, date and at the location specified for the receipt of proposals. The subcontractor's package should be clearly marked with the RFP number, the name of the prime offeror, and a statement that the package is subcontractor data relevant to the proposal from the prime offeror. If submitted with the prime contractor's proposal, identify the subcontractors. State the amount of service estimated to be required and the quoted daily or hourly rate. Offerors are encouraged to provide letters of intent, signed by subcontractors, agreeing to a specified rate for life of the contract. Include a cost or price analysis of the subcontractor cost showing the reasons why the costs are considered reasonable;

(ii) Describe how the prospective team subcontractors were chosen as part of the offeror's proposed team; and rationale for selection;

(iii) Describe the necessity for the subcontractor's effort as either a supplement or complement to the offeror's in-house expertise;

(iv) Identify the areas of the scope of work and the level of effort the subcontractors are anticipated to perform. Provide a reconciliation summary of the proposed hours and ODCs for the prime contractor and proposed subcontractor(s).

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(v) Describe the prime contractor's management structure and internal controls to ensure efficient and quality performance of team subcontractors.

(8) Facilities Capital Cost of Money (FCCM). When an offeror elects to claim FCCM as an allowable cost, the offeror must submit Form CASB-CNF and show calculation of the proposed amount. FCCM will be an allowable cost under the contemplated contract, if the criteria for allowability at FAR 31.205-10(a)(2) are met.

[End of Provision]

Alternate I, Aug 1999. If the Government's requirement is a fully dedicated staff person for a twelve month period(s) for each specified position and performance is on a Government facility, add the following paragraph (b)(2)(x) to the basic provision:

(x) The level of effort for each position is to be proposed in work years. A work year is considered to consist of 2080 hours inclusive of direct and indirect time (40 hours per week \times 52 weeks per year=2080 hours). The proposal must identify proposed work years and clearly identify how many hours in each work year are direct (i.e., productive working hours) and how many are indirect (i.e., paid absences). If the company policy includes a different base work week, the total available hours would be different. For example, if the company's policy calls for a 37.5 hour work week, offeror would deduct paid absences from 1950 hour (37.5 hours/week \times 52 weeks/year=1950 hours). Offeror should clearly identify the paid absences as to how many hours are for holiday and how many hours are for vacation and sick leave. The amount of indirect time (paid absences) identified in the proposal must be consistent with company policy and must allow for the ten Federal government holidays.

Alternate II, Aug 1999. If the Government's requirement is a fully dedicated staff person for a twelve month period(s) for each specified position and performance is not on a Government facility; add the following paragraph (b)(2)(x) to the basic provision:

(x) The level of effort for each position is to be proposed in work years. A work year is considered to consist of 2080 hours inclusive of direct and indirect time (40 hours per week \times 52 weeks per year=2080 hours). The proposal must identify proposed work years and clearly identify how many hours in each work year are direct (i.e., productive working hours) and how many are indirect (i.e., paid absences). If the company policy includes a different base work week, the total available hours would be different. For example, if the company's policy calls for a 37.5 hour work week, offeror would deduct paid absences from 1950 hour (37.5 hours/week \times 52 weeks/year=1950 hours). Offeror should clearly identify the paid absences as to how many

hours are for holiday and how many hours are for vacation and sick leave.

Alternate III, Aug 1999. If the requirement is for the acquisition of supplies or equipment, substitute the following paragraphs (a)(iv)–(viii) and add (a)(ix) and (b).

(iv) Provide information as to how the proposed supplies or equipment meet the salient characteristics required by the contract line item;

(v) Provide published brochures, catalogs, or other technical literature by contract line item;

(vi) Meet any interface or compatibility requirements by contract line item;

(vii) Describe warranty services and how delivered by contract line item;

(viii) Assumptions, deviations and exceptions (as necessary); and

(ix) Additional information.

(b) Supplies—Provide unit pricing by contract line items for:

(i) each line item;

(ii) delivery;

(iii) installation;

(iv) sets of operating manuals;

(v) training;

(vi) warranty;

(vii) maintenance; and

(viii) volume discounts.

[64 FR 47415, Aug. 31, 1999]

1552.215-73 General financial and organizational information.

As prescribed in 1515.408(a)(2), insert the following provision:

GENERAL FINANCIAL AND ORGANIZATIONAL INFORMATION: (AUG 1999)

Offerors or quoters are requested to provide information regarding the following items in sufficient detail to allow a full and complete business evaluation. If the question indicated is not applicable or the answer is none, it should be annotated. If the offeror has previously submitted the information, it should certify the validity of that data currently on file at EPA and to whom and where it was submitted or update all outdated information on file.

(a) Contractor's Name:

(b) Address (If financial records are maintained at some other location, show the address of the place where the records are kept):

(c) Telephone Number:

(d) Individual(s) to contact re. this proposal:

(e) Cognizant Government:

Audit Agency:

Address:

Auditor:

(f)(1) Work Distribution for the Last Completed Fiscal Accounting Period:

Sales:

Government cost-reimbursement type prime contracts and subcontracts \$

Government fixed-price prime contracts and subcontracts \$

Commercial Sales \$

Total Sales \$

(2) Total Sales for first and second fiscal years immediately preceding last completed fiscal year.

Total Sales for First Preceding Fiscal Year \$

Total Sales for Second Preceding Fiscal Year \$

(g) Is company a separate rate entity or division?.

Yes

No

If a division or subsidiary corporation, name parent company:

(h) Date Company Organized:

(i) Manpower:

Total Employees:

Direct:

Indirect:

Standard Work Week (Hours):

(j) Commercial Products:

(k) Attach a current organizational chart of the company.

(l) Description of Contractor's system of estimating and accumulating costs under Government contracts. (Check appropriate blocks.)

	Estimated/ actual cost	Standard cost
Estimating System:		
Job Order		
Process		
Accumulating System:		
Job Order		
Process		

Has your cost estimating system been approved by any Government agency?

Yes No

If yes, give name, date or approval, and location of agency:

Has your cost accumulation system been approved by any Government agency?

Yes No

If yes, give name, date of approval, and address of agency:

(m) What is your fiscal year period? (Give month-to-month dates):

What were the indirect cost rates for your last completed fiscal year?

Fiscal year	Indirect cost rate	Basis of allocation
Fringe Benefits		
Overhead		
G&A Expense		
Other		

(n) Have the proposed indirect cost rate(s) been evaluated and accepted by any Government agency?

Yes No

If yes, give name, date of approval, and location of the Government agency:

Date of last preaward audit review by a Government agency:

If the answer is no, data supporting the proposed rates must accompany the cost or price proposal. A breakdown of the items comprising overhead and G&A must be furnished.

(o) Cost estimating is performed by:

Accounting Department

Contracting Department

Other (describe)

(p) Has system of control of Government property been approved by a Government agency?

Yes No

If yes, give name, date of approval, and location of the Government agency:

(q) Purchasing System: FAR 44.302 requires EPA, where it is the cognizant Government agency, to conduct a Contractor Purchasing System Review for each contractor whose sales to the Government, using other than sealed bid procedures, are expected to exceed \$25 million (annual billings) during the next twelve months. The \$25 million sales threshold is comprised of prime contracts, sub-contractors under Government prime contracts, and modifications (except when the negotiated price is based on established catalog or market prices or is set by law or regulation).

Has your purchasing system been approved by a Government agency?

Yes No

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If yes, name and location of the Government agency:

Period of Approval:

If no, do you estimate that your negotiated sales to the Government during the next twelve months will meet the \$25 million threshold? Yes No

If you responded yes to the \$25 million threshold question, is EPA the cognizant agency for your organization based on the preponderance of Government contract dollars?

Yes No

If EPA is not your cognizant Government agency, provide the name and location of the cognizant agency

Are your purchasing policies and procedures written?

Yes No

(r) Does your firm have an established written incentive compensation or bonus plan?

Yes No

(s) Additionally, offerors shall submit current financial statements, including a Balance Sheet, Statement of Income (Loss), and Cash Flow for the last two completed fiscal years. Specify resources available to perform the contract without assistance from any outside source. If sufficient resources are not available, indicate in proposal the amount required and the anticipated source (i.e., bank loans, letter or lines of credit, etc.).

(END OF PROVISION)

[64 FR 47417, Aug. 31, 1999]

1552.215-74 Advanced understanding—uncompensated time.

As prescribed in 1515.408(b), insert the following provision or one substantially the same as the following provision:

ADVANCED UNDERSTANDING—UNCOMPENSATED TIME (AUG 1999)

(a) The estimated cost of this contract is based upon the Contractor's proposal which specified that exempt personnel identified to work at the Contractor's facilities will provide uncompensated labor hours to the contract totaling _____ percent of compensated labor. (Note: the commitment for uncompensated time, and the formula elements in paragraph (b) below, apply only to exempt personnel working at the Contractor's facilities and does not include non-exempt personnel or exempt personnel working at other facilities.) Uncompensated labor hours are defined as hours of exempt personnel in excess of regular hours for a pay period which are actually

worked and recorded in accordance with the company policy, entitled, _____.

(b) Recognizing that the probable cost to the Government for the labor provided under this contract is calculated assuming a proposed level of uncompensated labor hours, it is hereby agreed that in the event the proposed level of uncompensated labor hours are not provided, an adjustment, calculated in accordance with the following formula will be made to the contract amount.

Formula:

Adjustment equals estimated value of uncompensated time hours not provided.

Target uncompensated time percent minus _____ percent.

Shortage of uncompensated time percent minus actual cost percent.

Estimated value of uncompensated time hours not provided equals shortage of uncompensated time percent times total exempt applicable direct labor costs (including applicable indirect costs).

(c) Within three weeks after the end of the contract, the Contractor shall submit a statement concerning the amount of uncompensated time hours delivered during the contract. In the event there is a shortage of uncompensated time hours provided, a calculation, utilizing the above formula will be made and this calculation will be the basis for an adjustment in the contract amount.

(d) In the event adjustments are made to the contract, the adjusted amounts shall not be allowable as a direct or indirect cost to this or any other Government contract.

[End of clause]

[64 FR 47418, Aug. 31, 1999]

1552.215-75 [Reserved]

1552.215-76 General financial and organizational information.

As prescribed in 1515.407(a)(3), insert the following provisions:

GENERAL FINANCIAL AND ORGANIZATIONAL INFORMATION (APR 1984)

Offerors or quoters are requested to provide information regarding the following items in sufficient detail to allow a full and complete business evaluation. If the question indicated is not applicable or the answer is none, it should be annotated. If the offeror has previously submitted the information, it should certify the validity of that data currently on file at EPA or update all outdated information on file.

(a) Contractor's Name: _____

(b) Address (If financial records are maintained at some other location, show the address of the place where the records are kept): _____

(c) Telephone Number: .
 (d) Individual(s) to contact re this proposal:

(e) Cognizant Government:

Audit Agency:

Address:

Auditor:

(f)(1) Work Distribution for the Last Completed Fiscal Accounting Period:

Sales:

Government cost-reimbursement type prime contracts and subcontracts \$.....

Government fixed-price prime contracts and subcontracts ... \$.....

Commercial sales \$.....

Total sales \$.....

(2) Total sales for first and second fiscal years immediately preceding last completed fiscal year.

Total sales for first preceding fiscal year \$.....

Total sales for second preceding fiscal year \$.....

(g) Is company a separate entity or division?

If a division or subsidiary corporation, name parent company:

(h) Date Company Organized: .

(i) Manpower:

Total Employer:

Direct:

Indirect:

Standard Work Week (Hours):

(j) Commercial Products: .

(k) Attach a current organizational chart of the company.

(l) Description of Contractor's system of estimating and accumulating costs under Government contracts. (Check appropriate blocks.)

	Estimated/actual cost	Standard cost
Estimating System:		
Job Order
Process
Accumulating System:		
Job Order
Process

Has your cost estimating system been approved by any Government agency?

Yes No

If yes, give name and address of agency:

Has your cost accumulation system been approved by any Government agency?

Yes No

If yes, give name and address of agency:

(m) What is your fiscal year period? (Give month-to-month dates):

What were the indirect cost rates for your last completed fiscal year?

Fiscal year	Indirect cost rate	Basis of allocation
Fringe Benefits
Overhead
G&A Expense
Other

(n) Have the proposed indirect cost rate(s) been evaluated and accepted by any Government agency?

Yes No

If yes, name and location of the Government agency:

Date of last preaward audit review by a Government agency:

(If the answer is no, data supporting the proposed rates must accompany the cost or price proposal. A breakdown of the items comprising overhead and G&A must be furnished.)

(o) Cost estimating is performed by:

Accounting Department

Contracting Department

Other

(describe)

(p) Has system of control of Government property been approved by a Government agency?

Yes No

If yes, name and location of the Government agency:

(q) Purchasing System: FAR 44.302 requires EPA, where it is the cognizant Government agency, to conduct a Contractor Purchasing System Review for each contractor whose sales to the Government, using other than sealed bid procedures, are expected to exceed \$10 million (annual billings) during the next twelve months. The \$10 million sales threshold is comprised of prime contracts, subcontracts under Government prime contracts, and modifications (except when the negotiated price is based on established catalog or market prices or is set by law or regulation). Has your purchasing system been approved by a Government agency?

Yes No

If yes, name and location of the Government agency:

Period of Approval:

If no, do you estimate that your negotiated sales to the Government during the next twelve months will meet the \$10 million threshold?

Yes No

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If you respond yes to the \$10 million threshold question, is EPA the cognizant agency for your organization based on the preponderance of Government contract dollars?

Yes No

If EPA is not your cognizant Government agency, provide the name and location of the cognizant agency

Are your purchasing policies and procedures written?

Yes No

(r) Does your firm have an established written incentive competition or bonus plan?

Yes No

(End of provision)

(Approved by the Office of Management and Budget under control number 2030-0006)

[49 FR 8867, Mar. 8, 1984, as amended at 54 FR 36980, Sept. 6, 1989; 55 FR 13535, Apr. 11, 1990]

1552.216-70 Award Fee.

As prescribed in 1516.405(a), insert the following clause:

AWARD FEE (MAY 2000)

(a) The Government shall pay the contractor a base fee, if any, and such additional fee as may be earned, as provided in the award fee plan incorporated into the Schedule.

(b) Award fee determinations made by the Government under this contract are unilaterally determined by the Fee Determination Official (FDO). The amount of the award fee to be paid is determined by the Government's judgmental evaluation of the contractor's performance in terms of the criteria stated in the contract. This determination and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the Government.

(c) The Government may unilaterally change the award fee plan at any time, via contract modification, at least thirty (30) calendar days prior to the beginning of the applicable evaluation period. Changes issued in a unilateral modification are not subject to equitable adjustments, consideration, or any other renegotiation of the contract.

(End of Clause)

[60 FR 43404, Aug. 21, 1995, as amended at 65 FR 31500, May 18, 2000]

1552.216-71 Date of incurrence of cost.

At prescribed in 1516.307, insert the following contract clause in cost-reimbursement contracts when an anticipatory cost letter has been issued on

the project. The beginning dates and the not-to-exceed amount to be inserted in the clause should be those in the anticipatory cost letter.

DATE OF INCURRENCE OF COST (APR 1984)

The Contractor is entitled to reimbursement for allowable, allocable costs incurred during the period of _____ to the award date of this contract in an amount not to exceed \$ _____

All terms and conditions of this contract are in effect from _____

(End of clause)

1552.216-72 Ordering—by designated ordering officers.

As prescribed in 1516.505(a), insert the following in indefinite delivery/indefinite quantity contracts.

ORDERING—BY DESIGNATED ORDERING OFFICERS (APR 1984)

(a) The Government will order any supplies and services to be furnished under this contract by issuing delivery orders on Optional Form 347, or any agency prescribed form, from _____ through _____. In addition to the Contracting Officer, the following individuals are authorized ordering officers.

(b) A Standard Form 30 will be the method of amending delivery orders.

(c) The Contractor shall acknowledge receipt of each order and shall prepare and forward to the Ordering Officer within ten (10) calendar days the proposed staffing plan for accomplishing the assigned task within the period specified.

(d) If the Contractor considers the estimated labor hours or specified work completion date to be unreasonable, he/she shall promptly notify the Ordering Officer and Contracting Officer in writing within 10 calendar days, stating why the estimated labor hours or specified completion date is considered unreasonable.

(e) Each delivery order will have a ceiling price, which the Contractor may not exceed. When the Contractor has reason to believe that the labor payment and support costs for the order, which will accrue in the next thirty (30) days, will bring total cost to over 85 percent of the ceiling price specified in the order, the Contractor shall notify the Ordering Officer.

(f) Paragraphs (c), (d), and (e) of this clause apply only when services are being ordered.

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(End of clause)

**1552.216-73 Fixed rates for services—
indefinite delivery/indefinite quantity contract.**

As prescribed in 1516.505(b), insert the following clause to specify fixed rates for services in indefinite delivery/indefinite quantity contracts. When the contract contains options, the clause should be modified to reflect the information and data for the base period and any option periods.

FIXED RATES FOR SERVICES—INDEFINITE DELIVERY/INDEFINITE QUANTITY CONTRACT (APR 1984)

The following fixed rates shall apply for payment purposes for the duration of the contract.

Personnel classification	Skill level	Estimated direct labor hours	Fixed hourly rate	Total
.....
.....
.....
.....

The rate, or rates, set forth above cover all expenses, including report preparation, salaries, overhead, general and administrative expenses, and profit.

The Contractor shall voucher for only the time of the personnel whose services are applied directly to the work called for in individual Delivery Orders and accepted by the EPA Project Officer. The Government shall pay the Contractor for the life of a delivery order at rates in effect when the delivery order was issued, even if performance under the delivery order crosses into another period. The Contractor shall maintain time and labor distribution records for all employees who work under the contract. These records must document time worked and work performed by each individual on all Delivery Orders.

(End of clause)

1552.216-74 Payment of fee.

As prescribed in 1516.307(b), insert the following clause:

PAYMENT OF FEE (MAY 1991)

(a) The term *fee* in this clause refers to either the fixed fee under a cost-plus-fixed-fee type contract, or the base fee under a cost-plus-award-fee type contract.

(b) The Government will make provisional fee payments on the basis of percentage of work completed. Percentage of work completed is the ratio of direct labor hours performed to the direct labor hours set forth in

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clause 1552.211-73, *Level of Effort—Cost-Reimbursement Term Contract*.

(End of clause)

[56 FR 43711, Sept. 4, 1991, as amended at 63 FR 46899, Sept. 3, 1998]

1552.216-75 Base fee and award fee proposal.

As prescribed in 1516.405(b), insert the following clause:

BASE FEE AND AWARD FEE PROPOSAL (FEB 1999)

For the purpose of this solicitation, offerors shall propose a combination of base fee and award fee. Base fee shall not exceed 3% of the estimated cost, excluding fee, and the award fee shall not be less than % of the total estimated cost, excluding fee. The combined percentages of base and award fee shall not exceed % of the total estimated cost, excluding fee.

(End of clause)

[64 FR 3876, Jan. 26, 1999]

1552.216-76 Estimated cost and cost-sharing.

As prescribed in 1516.307(c), insert the following clause:

ESTIMATED COST AND COST-SHARING (APR 1996)

(a) The total estimated cost of performing the work under this contract is \$. The Contractor's share of this cost shall not exceed \$. The Government's share of this cost shall not exceed \$.

(b) For performance of the work under the contract, the Contractor shall be reimbursed for not more than percent of the cost of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining balance of allowable cost shall constitute the Contractor's share.

(c) Fee shall not be paid to the prime contractor under this cost-sharing contract.

(d) The Contractor shall maintain records of all costs incurred and claimed for reimbursement as well as any other costs claimed as part of its cost share. Those records shall be subject to audit by the Government.

(e) Costs contributed by the Contractor shall not be charged to the Government under any other contract, grant or agreement (including allocation to other contracts as part of an independent research and development program) nor be included as contributions under any other Federal contract.

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(End of Clause)

[61 FR 14505, Apr. 2, 1996]

1552.217-70 Evaluation of contract options.

As prescribed in 1517.208(a), insert the following solicitation provision in Requests for Proposals when the solicitation contains options.

EVALUATION OF CONTRACT OPTIONS (APR 1984)

For award purposes, in addition to an offeror's response to the basic requirement, the Government will evaluate its response to all options, both technical and cost. Evaluation of options will not obligate the Government to exercise the options. For this solicitation the options are as specified in section H.

(End of provision)

1552.217-71 Option to extend the term of the contract—cost-type contract.

As prescribed in 1517.208(b), insert this contract clause in cost-reimbursement type term form contracts when applicable. If only one option period is used, enter "NA" in the proper places of the clause. If more than two option periods apply, the clause may be modified accordingly.

OPTION TO EXTEND THE TERM OF THE CONTRACT—COST-TYPE CONTRACT (APR 1984)

The Government has the option to extend the term of this contract for additional period(s). If more than 60 days remain in the contract period of performance, the Government, without prior written notification, may exercise this option by issuing a contract modification. To exercise this option within the last 60 days of the period of performance, the Government must provide to the Contractor written notification prior to that last 60-day period. This preliminary notification does not commit the Government to exercising the option. The Government's estimated level of effort is direct labor hours for the first option period and for the second. Use of an option will result in the following contract modifications:

(a) The "Period of Performance" clause will be amended to cover a base period from to and option periods from to and to .

(b) Paragraph (a) of the "Level of Effort" clause will be amended to reflect a new and separate level of effort of for the first option period and a new and separate level of effort of for the second option period.

(c) The "Estimated Cost and Fixed Fee" clause will be amended to reflect increased estimated costs and fixed fee for each option period as follows:

	Option 1	Option 2
Estimated cost
Fixed fee
Total

(d) If the contract contains "not to exceed amounts" for elements of other direct costs (ODC), those amounts will be increased as follows:

Other direct cost item	Option 1	Option 2
.....
.....
.....

(End of clause)

1552.217-72 Option to extend the term of the contract—cost-plus-award-fee contract.

As prescribed in 1517.208(c), insert this contract clause in cost-plus-award-fee term contracts when applicable. If only one option period is used, enter "NA" in the proper places of the clause. If more than two option periods apply, modify the clause accordingly.

OPTION TO EXTEND THE TERM OF THE CONTRACT—COST-PLUS-AWARD-FEE CONTRACT (APR 1984)

(a) The Government has the option to extend the term of this contract for additional periods. If more than 60 days remain in the contract period of performance, the Government, without prior written notification, may exercise this option by issuing a contract modification. To exercise this option within the last 60 days of the period of performance, the Government must provide to the Contractor written notification prior to that last 60-day period. This preliminary notification does not commit the Government to exercising the option. The Government's estimated level of effort is direct labor hours for the first option period and for the second. Use of an option will result in the following contract modifications:

(b) The "Period of Performance" clause will be amended to cover a base period from to and option periods from to and to .

(c) Paragraph (a) of the "Level of Effort" clause will be amended to reflect a new and separate level of effort of for the first

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option period and a new and separate level of effort of _____ for the second option period.

(d) The “Estimated Cost Base Fee and Award Fee” clause will be amended to reflect increased estimated costs and base fee and award fee pool for each option period as follows:

	Option 1	Option 2
Estimated cost
Base fee
Award fee pool
Total

(e) If this contract contains “not to exceed amounts” for elements of other direct costs (ODC), those amounts will be increased as follows:

Other direct cost item	Option 1	Option 2
.....
.....
.....
.....

(End of clause)

[49 FR 8867, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1552.217-73 Option for increased quantity—cost-type contract.

As prescribed in 1517.208(d), insert this contract clause in cost-reimbursement type term form contracts when applicable. If only one option period is used, enter “NA” in the proper places of the clause. If more than two option periods apply, modify the clause accordingly.

OPTION FOR INCREASED QUANTITY—COST-TYPE CONTRACT (JUN 1997)

(a) By issuing a contract modification, the Government may increase the estimated level of effort by _____ direct labor hours during the base period, _____ during the first option period, and _____ during the second option period. The Government may issue a maximum of _____ orders to increase the level of effort in blocks of _____ hours during any given period. The estimated cost and fixed fee of each block of hours is as follows:

	Base period	Option 1	Option 2
Estimated cost
Fixed fee
Total

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(b) When these options are exercised, paragraph (a) of the “Level of Effort” clause and the “Estimated Cost and Fixed Fee” clause will be modified accordingly.

(c) If this contract contains “not to exceed amounts” for elements of other direct costs (ODCs), those amounts will be increased as follows:

Other direct cost item	Option 1	Option 2
.....

(End of clause)

[49 FR 8867, Mar. 8, 1984, as amended at 62 FR 37149, July 11, 1997; 62 FR 60667, Nov. 12, 1997]

1552.217-74 Option for increased quantity—cost-plus-award-fee contract.

As prescribed in 1517.208(e), insert this contract clause in cost-plus-award-fee term contracts when applicable. If only one option period is used, enter “NA” in the proper places of the clause. If more than two option periods apply, the clause may be modified accordingly.

OPTION FOR INCREASED QUANTITY—COST-PLUS-AWARD-FEE CONTRACT (JUN 1997)

(a) By issuing a contract modification, the Government may increase the estimated level of effort by _____ direct labor hours during the base period, _____ during the first option period, and _____ during the second option period. The Government may issue a maximum of _____ orders to increase the level of effort in blocks of _____ hours during any given period. The estimated cost, base fee, and award fee pool of each block of hours is as follows:

	Base period	Option 1	Option 2
Estimated cost
Base fee
Award fee pool
Total

(b) When these options are exercised, paragraph (a) of the “Level of Effort” clause and the “Estimated Cost, Base Fee, and Award Fee” clause will be modified accordingly.

(c) If this contract contains “not to exceed amounts” for elements of other direct costs (ODCs), those amounts will be increased as follows:

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Other direct cost item	Option 1	Option 2

(End of clause)

[49 FR 8867, Mar. 8, 1984, as amended at 62 FR 37149, July 11, 1997; 62 FR 60667, Nov. 12, 1997]

1552.217-75 Option to extend the effective period of the contract—time and materials or labor hour contract.

As prescribed in 1517.208(f), insert this clause in time and materials or labor hour type contracts when applicable. This clause will be modified to reflect the actual number of option periods for the acquisition. If only one option period is used, modify (c) accordingly.

OPTION TO EXTEND THE EFFECTIVE PERIOD OF THE CONTRACT—TIME AND MATERIALS OR LABOR HOUR CONTRACT (APR 1984)

(a) The Government has the option to extend the effective period of this contract for additional period(s). If more than sixty (60) days remain in the contract effective period, the Government, without prior written notification, may exercise this option by issuing a contract modification. To unilaterally exercise this option within the last 60 days of the effective period, the Government must issue written notification of its intent to exercise the option prior to that last 60-day period. This preliminary notification does not commit the Government to exercising the option.

(b) If the option(s) are exercised, the "Ceiling Price" clause will be modified to reflect a new and separate ceiling price of \$ for the first option period and a new and separate ceiling price of \$ for the second option period.

(c) The "Effective Period of the Contract" clause will be modified to cover a base period from to and option periods from to and to .

(End of clause)

[49 FR 8867, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1552.217-76 Option to extend the effective period of the contract— indefinite delivery/indefinite quantity contract.

As prescribed in 1517.208(g), the following is used in indefinite delivery/in-

definite quantity type contracts with options to extend the effective period of the contract. The clause may be adjusted depending upon the number of options. If only one option period is used, modify (b) and (c) accordingly.

OPTION TO EXTEND THE EFFECTIVE PERIOD OF THE CONTRACT—INDEFINITE DELIVERY/INDEFINITE QUANTITY CONTRACT

(a) The Government has the option to extend the effective period of this contract for additional period(s). If more than sixty (60) days remain in the contract effective period, the Government, without prior written notification, may exercise this option by issuing a contract modification. To unilaterally exercise this option within the last 60 days of the effective period, the Government must issue written notification of its intent to exercise the option prior to that last 60-day period. This preliminary notification does not commit the Government to exercising the option.

(b) If the options are exercised, the "Minimum and Maximum Contract Amount" clause will be modified to reflect new and separate minimums of for the first option period and for the second option period, and new and separate maximums of for the first option period and for the second option period.

(c) The "Effective Period of the Contract" clause will be modified to cover a base period from to and option periods from to and to .

(End of clause)

1552.223-70 Protection of human subjects.

As prescribed in 1523.303-70, insert the following contract clause when the contract involves human test subjects.

PROTECTION OF HUMAN SUBJECTS (APR 1984)

(a) The Contractor shall protect the rights and welfare of human subjects in accordance with the procedures specified in its current Institutional Assurance on file with the Agency. The Contractor shall certify at least annually that an appropriate institutional committee has reviewed and approved the procedures which involve human subjects in accordance with the applicable Institutional Assurance accepted by the Agency.

(b) The Contractor shall bear full responsibility for the proper and safe performance of all work and services involving the use of human subjects under this contract.

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(End of clause)

1552.224-70 Social security numbers of consultants and certain sole proprietors and Privacy Act statement.

As prescribed in 1524.104, insert the following provision in all solicitations.

SOCIAL SECURITY NUMBERS OF CONSULTANTS AND CERTAIN SOLE PROPRIETORS AND PRIVACY ACT STATEMENT (APR 1984)

(a) Section 6041 of title 26 of the U.S. Code requires EPA to file Internal Revenue Service (IRS) Form 1099 with respect to individuals who receive payments from EPA under purchase orders or contracts. Section 6109 of title 26 of the U.S. Code authorizes collection by EPA of the social security numbers of such individuals for the purpose of filing IRS Form 1099. Social security numbers obtained for this purpose will be used by EPA for the sole purpose of filing IRS Form 1099 in compliance with section 6041 of title 26 of the U.S. Code.

(b) If the offeror or quoter is an individual, consultant, or sole proprietor and has no Employer Identification Number, insert the offeror's or quoter's social security number on the following line.

(End of provision)

1552.227-76 Project employee confidentiality agreement.

As prescribed in 1527.409, insert the following clause:

PROJECT EMPLOYEE CONFIDENTIALITY AGREEMENT (MAY 1994)

(a) The Contractor recognizes that Contractor employees in performing this contract may have access to data, either provided by the Government or first generated during contract performance, of a sensitive nature which should not be released to the public without Environmental Protection Agency (EPA) approval. Therefore, the Contractor agrees to obtain confidentiality agreements from all of its employees working on requirements under this contract.

(b) Such agreements shall contain provisions which stipulate that each employee agrees that the employee will not disclose, either in whole or in part, to any entity external to EPA, the Department of Justice, or the Contractor, any information or data (as defined in FAR Section 27.401) provided by the Government or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the EPA Contracting Officer. If a contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure,

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sure, the Contractor must provide immediate advance notification to the EPA so that the EPA can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.

(c) The EPA may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to prevent the unauthorized disclosure of information to outside entities. If such a disclosure occurs without the written permission of the EPA Contracting Officer, the Government may terminate the contract, for default or convenience, or pursue other remedies as may be permitted by law or this contract.

(d) The Contractor further agrees to insert in any subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph, unless otherwise authorized by the Contracting Officer.

(End of clause)

[59 FR 18624, Apr. 19, 1994]

1552.229-70 State and local taxes.

As prescribed in 1529.401-70, insert the following clause:

STATE AND LOCAL TAXES (NOV 1989)

In accordance with FAR 29.303 and FAR 31.205-41, the Contractor or any subcontractor under this contract shall not be reimbursed for payment of any State and local taxes for which an exemption is available. The Contractor is responsible for determining the availability of State and local tax exemptions and obtaining such exemptions, if available. The Contractor shall include this clause, suitably modified to identify the parties, in all subcontracts at any tier. The Contractor shall notify the Contracting Officer if problems arise in obtaining a State and local tax exemption. The contractor may seek a waiver by the Contracting Officer from this requirement if the administrative burden of seeking an exemption appears to outweigh the potential savings to the Government.

(End of clause)

[54 FR 49998, Dec. 4, 1989]

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1552.232-70 Submission of invoices.

As prescribed in 1532.908, insert the following clause:

SUBMISSION OF INVOICES (JUN 1996)

In order to be considered properly submitted, an invoice or request for contract financing payment must meet the following contract requirements in addition to the requirements of FAR 32.905:

(a) Unless otherwise specified in the contract, an invoice or request for contract financing payment shall be submitted as an original and five copies. The Contractor shall submit the invoice or request for contract financing payment to the following offices/individuals designated in the contract: the original and two copies to the Accounting Operations Office shown in Block on the cover of the contract; two copies to the Project Officer (the Project Officer may direct one of these copies to a separate address); and one copy to the Contracting Officer.

(b) The Contractor shall prepare its invoice or request for contract financing payment on the prescribed Government forms. Standard Forms Number 1034, Public Voucher for Purchases and Services other than Personal, shall be used by contractors to show the amount claimed for reimbursement. Standard Form 1035, Public Voucher for Purchases and Services other than Personal—Continuation Sheet, shall be used to furnish the necessary supporting detail or additional information required by the Contracting Officer. The Contractor may submit self-designed forms which contain the required information.

(c)(1) The Contractor shall prepare a contract level invoice or request for contract financing payment in accordance with the invoice preparation instructions identified as a separate attachment in Section J of the contract. If contract work is authorized by individual work assignments, the invoice or request for contract financing payment shall also include a summary of the current and cumulative amounts claimed by cost element for each work assignment and for the contract total, as well as any supporting data for each work assignment as identified in the instructions.

(2) The invoice or request for contract financing payment shall include current and cumulative charges by major cost element such as direct labor, overhead, travel, equipment, and other direct costs. For current costs, each major cost element shall include the appropriate supporting schedule identified in the invoice preparation instructions. Cumulative charges represent the net sum of current charges by cost element for the contract period.

(3) The charges for subcontracts shall be further detailed in a supporting schedule

showing the major cost elements for each subcontract. The degree of detail for any subcontract exceeding \$5,000 is to be the same as that set forth under (c)(2).

(4) The charges for consultants shall be further detailed in the supporting schedule showing the major cost elements of each consultant. For current costs, each major cost element of the consulting agreement shall also include the supporting schedule identified in the invoice preparation instructions.

(d) Invoices or requests for contract financing payment must clearly indicate the period of performance for which payment is requested. Separate invoices or requests for contract financing payment are required for charges applicable to the basic contract and each option period.

(e)(1) Notwithstanding the provisions of the clause of this contract at FAR 52.216-7, Allowable Cost and Payment, invoices or requests for contract financing payment shall be submitted once per month unless there has been a demonstrated need and Contracting Officer approval for more frequent billings. When submitted on a monthly basis, the period covered by invoices or requests for contractor financing payments shall be the same as the period for monthly progress reports required under this contract.

(2) If the Contracting Officer allows submissions more frequently than monthly, one submittal each month shall have the same ending period of performance as the monthly progress report.

(3) Where cumulative amounts on the monthly progress report differ from the aggregate amounts claimed in the invoice(s) or request(s) for contract financing payments covering the same period, the contractor shall provide a reconciliation of the difference as part of the payment request. Alternate I (JUN 1996). If used in a fixed-rate type contract, substitute the following paragraphs (c)(1) and (2) for paragraphs (c)(1) and (2) of the basic clause:

(c)(1) The Contractor shall prepare a contract level invoice or request for contract financing payment in accordance with the invoice preparation instructions identified as a separate attachment in Section J of the contract. If contract work is authorized by individual delivery orders, the invoice or request for contract financing payment shall also include a summary of the current and cumulative amounts claimed by cost element for each delivery order and for the contract total, as well as any supporting data for each delivery order as identified in the instructions.

(2) The invoice or request for contract financing payment that employs a fixed rate feature shall include current and cumulative charges by contract labor category and by other major cost elements such as travel,

equipment, and other direct costs. For current costs, each cost element shall include the appropriate supporting schedules identified in the invoice preparation instructions.

[61 FR 29317, June 10, 1996]

1552.232-71—1552.232-72 [Reserved]

1552.232-73 Payments—fixed-rate services contract.

As prescribed in 1532.111, insert the following in indefinite delivery/indefinite quantity contracts with fixed services rates.

**PAYMENTS—FIXED-RATE SERVICES CONTRACT
(APR 1984)**

The Government shall pay the Contractor as follows upon the submission of invoices or vouchers approved by the Contracting Officer:

(a) Hourly rate. (1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expenses, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) to the paying office. The Contractor shall substantiate vouchers by evidence of actual payment and by individual daily job, timecards, or other substantiation approved by the Contracting Officer. Promptly after receipt of each substantiated voucher, the Government shall, except as otherwise provided in this contract and subject to the terms of paragraph (e) of this contract, pay the voucher as approved by the Contracting Officer.

(2) Unless otherwise prescribed in the Schedule, the Contracting Officer shall withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Contractor as provided in paragraph (f) of this contract.

(3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the "Disputes" clause of this contract. If the Schedule provides rates for overtime the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(b) Materials, other direct costs, and subcontracts. (1) The allowability of direct materials and other direct costs shall be determined by the Contracting Officer in accordance with subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract. Reasonable and allocable material handling costs or indirect costs may be included in the charge for material or other direct costs to the extent they are clearly excluded from the hourly rate. Material handling and/or indirect cost rates are specified in the "Indirect Costs" clause. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the Contractor's usual accounting practices consistent with subpart 31.2 of the FAR. The Contractor shall be reimbursed for items and services purchased directly for the contract only when cash, checks, or other forms of actual payment have been made for such purchased items or services. Direct materials or other direct costs, as used in this clause, are those items which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of the end product.

(2) Subcontracted effort may be included in the fixed hourly rates discussed in paragraph (a)(1) of this clause and will be reimbursed as discussed in that paragraph. Otherwise, the cost of subcontracts that are authorized under the subcontracts clause of this contract shall be reimbursable costs under this clause provided that the costs are consistent with paragraph (3) of this clause. Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the subcontractor in the same manner as for items and services purchased directly for the contract under paragraph (1) of this clause; however, this requirement shall not apply to a Contractor that is a small business concern. Reimbursable costs shall not include any costs arising from the letting, administration, or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under paragraph (a)(1) of this clause.

(3) To the extent able, the Contractor shall (i) obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and (ii) take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the Contracting Officer and give the reasons. Credit shall be given to the Government for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the

fault or neglect of the Contractor. The benefits lost without fault or neglect on the part of the Contractor, or lost through fault of the Government, shall not be deducted from gross costs.

(4) If the nature of the work to be performed requires the Contractor to furnish material which is regularly sold to the general public in the normal course of business by the Contractor, the price to be paid for such material, notwithstanding paragraph (b)(1) of this contract, shall be on the basis of an established catalog or list price, in effect when the material is furnished, less all applicable discounts to the Government; provided, that in no event shall such price be in excess of the Contractor's sales price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.

(c) Contracting Officer notification. For contract administration purposes, the Contractor shall notify the Contracting Officer in writing when the total value of all delivery orders issued exceeds 85 percent of the maximum price specified in the schedule.

(d) Maximum amount. The Government shall not be obligated to pay the Contractor any amount in excess of the maximum amount in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the maximum amount set forth in the Schedule, unless or until the Contracting Officer shall have notified the Contractor in writing that the maximum amount has been increased and shall have specified in the notice a revised maximum that shall constitute the maximum amount for performance under this contract. When and to the extent that the maximum amount set forth in the Schedule has been increased, any hours expended, and material or other direct costs incurred by the Contractor in excess of the maximum amount before the increase, shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the maximum amount.

(e) Audit. At any time before final payment under this contract, the Contracting Officer may request audit of the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the Contractor as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the terms of para-

graphs (f) and (g) of this clause), the Government shall promptly pay any balance due the Contractor. The completion invoice or voucher, and substantiating material, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event, later than one year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(f) Assignment. The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.

(2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(g) Refunds. The Contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Contractor or any assignee, that arise under the materials portion of this contract and for which the Contractor has received reimbursement, shall be paid by the Contractor to the Government. The Contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, an assignment to the Government of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the Contracting Officer.

(End of clause)

1552.233-70 Notice of filing requirements for agency protests.

As prescribed in 1533.103, insert the following clause in all types of solicitations:

NOTICE OF FILING REQUIREMENTS FOR AGENCY PROTESTS (JUL 1999)

Agency protests must be filed with the Contracting Officer in accordance with the requirements of FAR 33.103 (d) and (e). Within 10 calendar days after receipt of an adverse Contracting Officer decision, the protester may submit a written request for an independent review by the Head of the Contracting Activity. This independent review is available only as an appeal of a Contracting Officer decision on a protest. Accordingly, as provided in 4 CFR 21.2(a)(3), any protest to the GAO must be filed within 10 days of knowledge of the initial adverse Agency action.

[64 FR 17110, Apr. 8, 1999]

1552.235-70 Screening business information for claims of confidentiality.

As prescribed in 1535.007-70(a), insert the following contract clause in all types of contracts when the Contracting Officer has determined that during performance of this contract, the Contractor may be required to collect information to perform the work required under this contract. Some of the information may consist of trade secrets or commercial or financial information that would be considered as proprietary or confidential by the business that has the right to the information. The following clause enables EPA to resolve any claims of confidentiality concerning the information that the Contractor will furnish under a contract. The clause entitled "Treatment of Confidential Business Information" shall also be included in the contract:

SCREENING BUSINESS INFORMATION FOR CLAIMS OF CONFIDENTIALITY (APR 1984)

(a) Whenever collecting information under this contract, the Contractor agrees to comply with the following requirements:

(i) If the Contractor collects information from public sources, such as books, reports, journals, periodicals, public records, or other sources that are available to the public without restriction, the Contractor shall submit a list of these sources to the appropriate pro-

gram office at the time the information is initially submitted to EPA. The Contractor shall identify the information according to source.

(2) If the Contractor collects information from a State or local Government or from a Federal agency, the Contractor shall submit a list of these sources to the appropriate program office at the time the information is initially submitted to EPA. The Contractor shall identify the information according to source.

(3) If the Contractor collects information directly from a business or from a source that represents a business or businesses, such as a trade association:

(i) Before asking for the information, the Contractor shall identify itself, explain that it is performing contractual work for the U.S. Environmental Protection Agency, identify the information that it is seeking to collect, explain what will be done with the information, and give the following notice:

(A) You may, if you desire, assert a business confidentiality claim covering part or all of the information. If you do assert a claim, the information will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 CFR part 2, subpart B.

(B) If no such claim is made at the time this information is received by the Contractor, it may be made available to the public by the Environmental Protection Agency without further notice to you.

(C) The contractor shall, in accordance with FAR part 9, execute a written agreement regarding the limitations of the use of this information and forward a copy of the agreement to the Contracting Officer.

(ii) Upon receiving the information, the Contractor shall make a written notation that the notice set out above was given to the source, by whom, in what form, and on what date.

(iii) At the time the Contractor initially submits the information to the appropriate program office, the Contractor shall submit a list of these sources, identify the information according to source, and indicate whether the source made any confidentiality claim and the nature and extent of the claim.

(b) The Contractor shall keep all information collected from nonpublic sources confidential in accordance with the clause in this contract entitled "Treatment of Confidential Business Information" as if it had been furnished to the Contractor by EPA.

(c) The Contractor agrees to obtain the written consent of the Contracting Officer, after a written determination by the appropriate program office, prior to entering into

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any subcontract that will require the subcontractor to collect information. The Contractor agrees to include this clause, including this paragraph (c), and the clause entitled "Treatment of Confidential Business Information" in all subcontracts awarded pursuant to this contract that require the subcontractor collect information.

(End of clause)

1552.235-71 Treatment of confidential business information.

As prescribed in 1535.007-70(b), insert the following contract clause in all types of contracts when the Contracting Officer has determined that in the performance of a contract, EPA may furnish confidential business information to the Contractor that EPA obtained under the Clean Air Act (42 U.S.C. 7401 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. 1251, *et seq.*), the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*), the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), or the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*). EPA regulations on confidentiality of business information in 40 CFR part 2 subpart B require that the Contractor agree to the clause entitled "Treatment of Confidential Business Information" before any confidential business information may be furnished to the Contractor:

TREATMENT OF CONFIDENTIAL BUSINESS INFORMATION (APR 1984)

(a) The Contracting Officer, after a written determination by the appropriate program office, may disclose confidential business information to the Contractor necessary to carry out the work required under this contract. The Contractor agrees to use the confidential information only under the following conditions:

(1) The Contractor and Contractor's Employees shall: (i) use the confidential information only for the purposes of carrying out the work required by the contract; (ii) not disclose the information to anyone other than EPA employees without the prior written approval of the Assistant General Counsel for Contracts and Information Law; and (iii) return to the Contracting Officer all copies of the information, and any abstracts or excerpts therefrom, upon request by the Contracting Officer, whenever the information is no longer required by the Contractor

for the performance of the work required by the contract, or upon completion of the contract.

(2) The Contractor shall obtain a written agreement to honor the above limitations from each of the Contractor's employees who will have access to the information before the employee is allowed access.

(3) The Contractor agrees that these contract conditions concerning the use and disclosure of confidential information are included for the benefit of, and shall be enforceable by, both EPA and any affected business having a proprietary interest in the information.

(4) The Contractor shall not use any confidential information supplied by EPA or obtained during performance hereunder to compete with any business to which the confidential information relates.

(b) The Contractor agrees to obtain the written consent of the Contracting Officer, after a written determination by the appropriate program office, prior to entering into any subcontract that will involve the disclosure of confidential business information by the Contractor to the subcontractor. The Contractor agrees to include this clause, including this paragraph (b), in all subcontracts awarded, pursuant to this contract, that require the furnishing of confidential business information to the subcontractor.

(End of clause)

1552.235-72 [Reserved]

1552.235-73 Access to Federal Insecticide, Fungicide, and Rodenticide Act Confidential Business Information (Apr 1996).

As prescribed in 1535.007(a), insert the following provision:

ACCESS TO FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT CONFIDENTIAL BUSINESS INFORMATION (APR 1996)

In order to perform duties under the contract, the Contractor will need to be authorized for access to Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) confidential business information (CBI). The Contractor and all of its employees handling CBI while working under the contract will be required to follow the procedures contained in the security manual entitled "FIFRA Information Security Manual." These procedures include applying for FIFRA CBI access authorization for each individual working under the contract who will have access to FIFRA CBI, execution of confidentiality agreements, and designation by the Contractor of an individual to serve as a Document Control Officer. The Contractor will be required to abide by those clauses contained

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in EPAAR 1552.235-70, 1552.235-71, and 1552.235-77 that are appropriate to the activities set forth in the contract.

Until EPA has approved the Contractor's security plan, the Contractor may not be authorized for FIFRA CBI access away from EPA facilities.

(End of Provision)

[61 FR 14265, Apr. 1, 1996]

1552.235-74 [Reserved]

1552.235-75 Access to Toxic Substances Control Act Confidential Business Information (Apr 1996).

As prescribed in 1535.007(b), insert the following provision:

ACCESS TO TOXIC SUBSTANCES CONTROL ACT
CONFIDENTIAL BUSINESS INFORMATION (APR
1996)

In order to perform duties under the contract, the Contractor will need to be authorized for access to Toxic Substances Control Act (TSCA) confidential business information (CBI). The Contractor and all of its employees handling CBI while working under the contract will be required to follow the procedures contained in the security manual entitled "TSCA Confidential Business Information Security Manual." These procedures include applying for TSCA CBI access authorization for each individual working under the contract who will have access to TSCA CBI, execution of confidentiality agreements, and designation by the Contractor of an individual to serve as a Document Control Officer. The Contractor will be required to abide by those clauses contained in EPAAR 1552.235-70, 1552.235-71, and 1552.235-78 that are appropriate to the activities set forth in the contract.

Until EPA has inspected and approved the Contractor's facilities, the Contractor may not be authorized for TSCA CBI access away from EPA facilities.

(End of Provision)

[61 FR 14265, Apr. 1, 1996]

1552.235-76 Treatment of Confidential Business Information (Apr 1996).

As prescribed in 1535.007-70(c), insert the following clause:

TREATMENT OF CONFIDENTIAL BUSINESS
INFORMATION (TSCA) (APR 1996)

(a) The Project Officer (PO) or his/her designee, after a written determination by the appropriate program office, may disclose confidential business information (CBI) to the Contractor necessary to carry out the

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work required under this contract. The Contractor agrees to use the CBI only under the following conditions:

(1) The Contractor and Contractor's employees shall (i) use the CBI only for the purposes of carrying out the work required by the contract; (ii) not disclose the information to anyone other than properly cleared EPA employees without the prior written approval of the Assistant General Counsel for Information Law or his/her designee; and (iii) return the CBI to the PO or his/her designee, whenever the information is no longer required by the Contractor for performance of the work required by the contract, or upon completion of the contract.

(2) The Contractor shall obtain a written agreement to honor the above limitations from each of the Contractor's employees who will have access to the information before the employee is allowed access.

(3) The Contractor agrees that these contract conditions concerning the use and disclosure of CBI are included for the benefit of, and shall be enforceable by, both EPA and any affected businesses having a proprietary interest in the information.

(4) The Contractor shall not use any CBI supplied by EPA or obtained during performance hereunder to compete with any business to which the CBI relates.

(b) The Contractor agrees to obtain the written consent of the CO, after a written determination by the appropriate program office, prior to entering into any subcontract that will involve the disclosure of CBI by the Contractor to the subcontractor. The Contractor agrees to include this clause, including this paragraph (b), in all subcontracts awarded pursuant to this contract that require the furnishing of CBI to the subcontractor.

(End of Clause)

[61 FR 14266, Apr. 1, 1996, as amended at 61 FR 57339, Nov. 6, 1996]

1552.235-77 Data Security for Federal Insecticide, Fungicide and Rodenticide Act Confidential Business Information (December 1997).

As prescribed in 1535.007-70(d), insert the following clause:

DATA SECURITY FOR FEDERAL INSECTICIDE,
FUNGICIDE, AND RODENTICIDE ACT CON-
FIDENTIAL BUSINESS INFORMATION (DEC
1997)

The Contractor shall handle Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) confidential business information (CBI) in accordance with the contract clause entitled "Treatment of Confidential Business Information" and "Screening Business Information for Claims of Confidentiality,"

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the provisions set forth below, and the Contractor's approved detailed security plan.

(a) The Project Officer (PO) or his/her designee, after a written determination by the appropriate program office, may disclose FIFRA CBI to the contractor necessary to carry out the work required under this contract. The Contractor shall protect all FIFRA CBI to which it has access (including CBI used in its computer operations) in accordance with the following requirements:

(1) The Contractor and Contractor's employees shall follow the security procedures set forth in the FIFRA Information Security Manual. The manual may be obtained from the Project Officer (PO) or the Chief, Information Services Branch (ISB), Program Management and Support Division, Office of Pesticide Programs (OPP) (H7502C), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(2) The Contractor and Contractor's employees shall follow the security procedures set forth in the Contractor's security plan(s) approved by EPA.

(3) Prior to receipt of FIFRA CBI by the Contractor, the Contractor shall ensure that all employees who will be cleared for access to FIFRA CBI have been briefed on the handling, control, and security requirements set forth in the FIFRA Information Security Manual.

(4) The Contractor Document Control Officer (DCO) shall obtain a signed copy of the FIFRA "Contractor Employee Confidentiality Agreement" from each of the Contractor's employees who will have access to the information before the employee is allowed access.

(b) The Contractor agrees that these requirements concerning protection of FIFRA CBI are included for the benefit of, and shall be enforceable by, both EPA and any affected business having a proprietary interest in the information.

(c) The Contractor understands that CBI obtained by EPA under FIFRA may not be disclosed except as authorized by the Act, and that any unauthorized disclosure by the Contractor or the Contractor's employees may subject the Contractor and the Contractor's employees to the criminal penalties specified in FIFRA (7 U.S.C. 136h(f)). For purposes of this contract, the only disclosures that EPA authorizes the Contractor to make are those set forth in the clause entitled "Treatment of Confidential Business Information."

(d) The Contractor agrees to include the provisions of this clause, including this paragraph (d), in all subcontracts awarded pursuant to this contract that require the furnishing of CBI to the subcontractor.

(e) At the request of EPA or at the end of the contract, the Contractor shall return to the EPA PO or his/her designee all documents, logs, and magnetic media which con-

tain FIFRA CBI. In addition, each Contractor employee who has received FIFRA CBI clearance will sign a "Confidentiality Agreement for Contractor Employees Upon Relinquishing FIFRA CBI Access Authority." The Contractor DCO will also forward those agreements to the EPA PO or his/her designee, with a copy to the CO, at the end of the contract.

(f) If, subsequent to the date of this contract, the Government changes the security requirements, the CO shall equitably adjust affected provisions of this contract, in accordance with the "Changes" clause when:

(1) The Contractor submits a timely written request for an equitable adjustment; and

(2) The facts warrant an equitable adjustment.

(End of Clause)

[61 FR 14266, Apr. 1, 1996, as amended at 62 FR 38478, July 18, 1997; 63 FR 418, Jan. 6, 1998; 65 FR 47325, Aug. 2, 2000]

1552.235-78 Data Security for Toxic Substances Control Act Confidential Business Information (December 1997).

As prescribed in 1535.007-70(e), insert the following clause:

DATA SECURITY FOR TOXIC SUBSTANCES CONTROL ACT CONFIDENTIAL BUSINESS INFORMATION (DEC 1997)

The Contractor shall handle Toxic Substances Control Act (TSCA) confidential business information (CBI) in accordance with the contract clause entitled "Treatment of Confidential Business Information" and "Screening Business Information for Claims of Confidentiality."

(a) The Project Officer (PO) or his/her designee, after a written determination by the appropriate program office, may disclose TSCA CBI to the contractor necessary to carry out the work required under this contract. The Contractor shall protect all TSCA CBI to which it has access (including CBI used in its computer operations) in accordance with the following requirements:

(1) The Contractor and Contractor's employees shall follow the security procedures set forth in the TSCA CBI Security Manual. The manual may be obtained from the Director, Information Management Division (IMD), Office of Pollution Prevention and Toxics (OPPT), U.S. Environmental Protection Agency (EPA), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Prior to receipt of TSCA CBI by the Contractor, the Contractor shall ensure that all employees who will be cleared for access to TSCA CBI have been briefed on the handling, control, and security requirements set forth in the TSCA CBI Security Manual.

(2) The Contractor shall permit access to and inspection of the Contractor's facilities in use under this contract by representatives of EPA's Assistant Administrator for Administration and Resources Management, and the TSCA Security Staff in the OPPT, or by the EPA Project Officer.

(3) The Contractor Document Control Officer (DCO) shall obtain a signed copy of EPA Form 7740-6, "TSCA CBI Access Request, Agreement, and Approval," from each of the Contractor's employees who will have access to the information before the employee is allowed access. In addition, the Contractor shall obtain from each employee who will be cleared for TSCA CBI access all information required by EPA or the U.S. Office of Personnel Management for EPA to conduct a Minimum Background Investigation.

(b) The Contractor agrees that these requirements concerning protection of TSCA CBI are included for the benefit of, and shall be enforceable by, both EPA and any affected business having a proprietary interest in the information.

(c) The Contractor understands that CBI obtained by EPA under TSCA may not be disclosed except as authorized by the Act, and that any unauthorized disclosure by the Contractor or the Contractor's employees may subject the Contractor and the Contractor's employees to the criminal penalties specified in TSCA (15 U.S.C. 2613(d)). For purposes of this contract, the only disclosures that EPA authorizes the Contractor to make are those set forth in the clause entitled "Treatment of Confidential Business Information."

(d) The Contractor agrees to include the provisions of this clause, including this paragraph (d), in all subcontracts awarded pursuant to this contract that require the furnishing of CBI to the subcontractor.

(e) At the request of EPA or at the end of the contract, the Contractor shall return to the EPA PO or his/her designee, all documents, logs, and magnetic media which contain TSCA CBI. In addition, each Contractor employee who has received TSCA CBI clearance will sign EPA Form 7740-18, "Confidentiality Agreement for Contractor Employees Upon Relinquishing TSCA CBI Access Authority." The Contractor DCO will also forward those agreements to the EPA OPPT/IMD, with a copy to the CO, at the end of the contract.

(f) If, subsequent to the date of this contract, the Government changes the security requirements, the CO shall equitably adjust affected provisions of this contract, in accordance with the "Changes" clause, when:

- (1) The Contractor submits a timely written request for an equitable adjustment; and,
- (2) The facts warrant an equitable adjustment.

(End of Clause)

[61 FR 14266, Apr. 1, 1996, as amended at 62 FR 38478, July 18, 1997; 63 FR 418, Jan. 6, 1998; 65 FR 47325, Aug. 2, 2000]

1552.235-79 Release of contractor confidential business information (Apr 1996).

As prescribed in 1535.007-70(f), insert the following clause:

RELEASE OF CONTRACTOR CONFIDENTIAL BUSINESS INFORMATION (APR 1996)

(a) The Environmental Protection Agency (EPA) may find it necessary to release information submitted by the Contractor either in response to this solicitation or pursuant to the provisions of this contract, to individuals not employed by EPA. Business information that is ordinarily entitled to confidential treatment under existing Agency regulations (40 CFR Part 2) may be included in the information released to these individuals. Accordingly, by submission of this proposal or signature on this contract or other contracts, the Contractor hereby consents to a limited release of its confidential business information (CBI).

(b) Possible circumstances where the Agency may release the Contractor's CBI include, but are not limited to the following:

(1) To other Agency contractors tasked with assisting the Agency in the recovery of Federal funds expended pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sec. 9607, as amended, (CERCLA or Superfund);

(2) To the U.S. Department of Justice (DOJ) and contractors employed by DOJ for use in advising the Agency and representing the Agency in procedures for the recovery of Superfund expenditures;

(3) To parties liable, or potentially liable, for costs under CERCLA Sec. 107 (42 U.S.C. Sec. 9607), et al, and their insurers (Potentially Responsible Parties) for purposes of facilitating settlement or litigation of claims against such parties;

(4) To other Agency contractors who, for purposes of performing the work required under the respective contracts, require access to information the Agency obtained under the Clean Air Act (42 U.S.C. 7401 et seq.); the Federal Water Pollution Control Act (33 U.S.C.1251 et seq.); the Safe Drinking Water Act (42 U.S.C. 300f et seq.); the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.);

(5) To other Agency contractors tasked with assisting the Agency in handling and

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processing information and documents in the administration of Agency contracts, such as providing both preaward and post award audit support and specialized technical support to the Agency's technical evaluation panels;

(6) To employees of grantees working at EPA under the Senior Environmental Employment (SEE) Program;

(7) To Speaker of the House, President of the Senate, or Chairman of a Committee or Subcommittee;

(8) To entities such as the General Accounting Office, boards of contract appeals, and the Courts in the resolution of solicitation or contract protests and disputes;

(9) To Agency contractor employees engaged in information systems analysis, development, operation, and maintenance, including performing data processing and management functions for the Agency; and

(10) Pursuant to a court order or court-supervised agreement.

(c) The Agency recognizes an obligation to protect the contractor from competitive harm that may result from the release of such information to a competitor. (See also the clauses in this document entitled "Screening Business Information for Claims of Confidentiality" and "Treatment of Confidential Business Information.") Except where otherwise provided by law, the Agency will permit the release of CBI under subparagraphs (1), (3), (4), (5), (6), or (9) only pursuant to a confidentiality agreement.

(d) With respect to contractors, 1552.235-71 will be used as the confidentiality agreement. With respect to Potentially Responsible Parties, such confidentiality agreements may permit further disclosure to other entities where necessary to further settlement or litigation of claims under CERCLA. Such entities include, but are not limited to accounting firms and technical experts able to analyze the information, provided that they also agree to be bound by an appropriate confidentiality agreement.

(e) This clause does not authorize the Agency to release the Contractor's CBI to the public pursuant to a request filed under the Freedom of Information Act.

(f) The Contractor agrees to include this clause, including this paragraph (f), in all subcontracts at all levels awarded pursuant to this contract that require the furnishing of confidential business information by the subcontractor.

(End of clause)

[61 FR 14267, Apr. 1, 1996]

1552.236-70 Samples and certificates.

As prescribed in 1536.521, insert the following contract clause in construction contracts.

SAMPLES AND CERTIFICATES (APR 1984)

When required by the specifications or the Contracting Officer, samples, certificates, and test data shall be submitted after award of the contract, prepaid, in time for proper action by the Contracting Officer or his/her designated representative. Certificates and test data shall be submitted in triplicate to show compliance of materials and construction specified in the contract performance requirements. Samples shall be submitted in duplicate by the Contractor, except as otherwise specified, to show compliance with the contract requirements. Materials or equipment for which samples, certifications or test data are required shall not be used in the work until approved in writing by the Contracting Officer.

(End of clause)

1552.237-70 Contract publication review procedures.

As prescribed in 1537.110, insert the following contract clause when the products of the contract are subject to contract publication review.

CONTRACT PUBLICATION REVIEW PROCEDURES (APR 1984)

(a) Material generated under this contract intended for release to the public is subject to the Agency's publication review process in accordance with the EPA Order on this subject and the following.

(b) Except as indicated in paragraph (c) of this contract, the Contractor shall not independently publish or print material generated under this contract until after completion of the EPA review process. The Project Officer will notify the Contractor of review completion within calendar days after the Contractor's transmittal to the Project Officer of material generated under this contract. If the Contractor does not receive Project Officer notification within this period, the Contractor shall immediately notify the Contracting Officer in writing.

(c) The Contractor may publish, in a scientific journal, material resulting directly or indirectly from work performed under this contract, subject to the following:

(1) The Contractor shall submit to the Contracting Officer and the Project Officer, at least 30 days prior to publication, a copy of any paper, article, or other dissemination of information intended for publication.

(2) The Contractor shall include the following statement in a journal article which has not been subjected to EPA review: "Although the research described in this article has been funded wholly or in part by the United States Environmental Protection

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Agency contract (number) to (Name of Contractor), it has not been subject to the Agency's review and therefore does not necessarily reflect the views of the Agency, and no official endorsement should be inferred."

(3) Following publication of the journal article, the Contractor shall submit five copies of the journal article to the Project Officer, and one copy to the Contracting Officer.

(d) If the Government has completed the review process and agreed that the contract material may be attributed to EPA, the Contractor shall include the following statement in the document:

This material has been funded wholly or in part by the United States Environmental Protection Agency under contract (number) to (name). It has been subject to the Agency's review, and it has been approved for publication as an EPA document. Mention of trade names or commercial products does not constitute endorsement or recommendation for use.

(e) If the Government has completed the review process, but decides not to publish the material, the Contractor may independently publish and distribute the material for its own use and its own expense, and shall include the following statement in any independent publication:

Although the information described in this article has been funded wholly or in part by the United States Environmental Protection Agency under contract (number) to (name), it does not necessarily reflect the views of the Agency and no official endorsement should be inferred.

(End of clause)

1552.237-71 Technical direction.

As prescribed in 1537.110, insert the following contract clause in cost-reimbursement contracts.

TECHNICAL DIRECTION (APR 1984)

(a) The Project Officer will provide technical direction on contract performance. Technical direction includes:

(1) Direction to the Contractor which assists him in accomplishing the Statement of Work.

(2) Comments on and approval of reports or other deliverables.

(b) Technical direction must be within the contract Statement of Work. The Project Officer does not have the authority to issue technical direction which (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in the "Changes" clause; (3) causes an increase or decrease in the estimated cost of the contract; (4) alters the period of performance; or (5) changes any of the other express terms or conditions of the contract.

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(c) Technical direction will be issued in writing by the Project Officer or confirmed by him in writing within five (5) calendar days after verbal issuance.

(End of clause)

1552.237-72 Key personnel.

As prescribed in 1537.110, insert the following contract clause when it is necessary for contract performance to identify Contractor key personnel.

KEY PERSONNEL (APR 1984)

(a) The Contractor shall assign to this contract the following key personnel:

(b) During the first ninety (90) days of performance, the Contractor shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment. The Contractor shall notify the Contracting Officer within 15 calendar days after the occurrence of any of these events and provide the information required by paragraph (c) of this clause. After the initial 90-day period, the Contractor shall submit the information required by paragraph (c) to the Contracting Officer at least 15 days prior to making any permanent substitutions.

(c) The Contractor shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the Contracting Officer. Proposed substitutes should have comparable qualifications to those of the persons being replaced. The Contracting Officer will notify the Contractor within 15 calendar days after receipt of all required information of the decision on substitutions. This clause will be modified to reflect any approved changes of key personnel.

(End of clause)

1552.237-73 Consultant services and consent.

As prescribed in 1537.110, insert the following contract clause in contracts where the services of consultants are required. Enter "none" in paragraph (b) if consent is not given for one or more consultants at the time of award.

CONSULTANT SERVICES AND CONSENT (APR 1984)

(a) The Contractor shall obtain the consent of the Contracting Officer prior to using any consultant on this contract. The Contractor shall determine whether any consultant that

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is used has in effect an agreement with another Federal agency for similar or like services and, if so, shall notify the Contracting Officer.

(b) The Contractor may use the following consultants for the period of time at the rate shown.

Name	Number of (days) (hours)	Not to exceed the (daily) (hourly) rate of
.....	\$.....
.....	\$.....

(End of clause)

1552.237-74 Publicity.

As prescribed in 1537.110, insert the following contract clause in contracts pertaining to the removal or remedial activities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) ("Super Fund") program. The term "on-scene coordinator" may be substituted with "Project Officer."

PUBLICITY (APR 1984)

(a) The Contractor agrees to notify and obtain the verbal approval of the on-scene coordinator (or Project Officer) prior to releasing any information to the news media regarding the removal or remedial activities being conducted under this contract.

(b) It is also agreed that the Contractor shall acknowledge EPA support whenever the work funded in whole or in part by this contract is publicized in any news media.

(End of clause)

1552.237-75 Paperwork Reduction Act.

As prescribed in 1537.110, insert this contract clause in any contract requiring the collection of identical information from ten (10) or more public respondents.

PAPERWORK REDUCTION ACT (APR 1984)

If it is established at award or subsequently becomes a contractual requirement to collect identical information from ten (10) or more public respondents, the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* applies. In that event, the Contractor shall not take any action to solicit information from any of the public respondents until notified in writing by the Contracting officer that the required Office of Management and Budget (OMB) final clearance was received.

(End of clause)

1552.237-76 Government-Contractor Relations.

As prescribed in 1537.110(g), insert the following clause:

GOVERNMENT-CONTRACTOR RELATIONS (JUNE 1999)

(a) The Government and the Contractor understand and agree that the services to be delivered under this contract by the contractor to the Government are non-personal services and the parties recognize and agree that no employer-employee relationship exists or will exist under the contract between the Government and the Contractor's personnel. It is, therefore, in the best interest of the Government to afford both parties a full understanding of their respective obligations.

(b) Contractor personnel under this contract shall not:

(1) Be placed in a position where they are under the supervision, direction, or evaluation of a Government employee.

(2) Be placed in a position of command, supervision, administration or control over Government personnel, or over personnel of other Contractors under other EPA contracts, or become a part of the Government organization.

(3) Be used in administration or supervision of Government procurement activities.

(c) Employee relationship. (1) The services to be performed under this contract do not require the Contractor or his/her personnel to exercise personal judgment and discretion on behalf of the Government. Rather the Contractor's personnel will act and exercise personal judgment and discretion on behalf of the Contractor.

(2) Rules, regulations, directives, and requirements that are issued by the U.S. Environmental Protection Agency under its responsibility for good order, administration, and security are applicable to all personnel who enter the Government installation or who travel on Government transportation. This is not to be construed or interpreted to establish any degree of Government control that is inconsistent with a non-personal services contract.

(d) Inapplicability of employee benefits. This contract does not create an employer-employee relationship. Accordingly, entitlements and benefits applicable to such relationships do not apply.

(1) Payments by the Government under this contract are not subject to Federal income tax withholdings.

(2) Payments by the Government under this contract are not subject to the Federal Insurance Contributions Act.

(3) The Contractor is not entitled to unemployment compensation benefits under the Social Security Act, as amended, by virtue of performance of this contract.

(4) The Contractor is not entitled to workman's compensation benefits by virtue of this contract.

(5) The entire consideration and benefits to the Contractor for performance of this contract is contained in the provisions for payment under this contract.

(e) Notice. It is the Contractor's, as well as, the Government's responsibility to monitor contract activities and notify the Contracting Officer if the Contractor believes that the intent of this clause has been or may be violated.

(1) The Contractor should notify the Contracting Officer in writing promptly, within (to be negotiated and inserted into the basic contract at contract award) calendar days from the date of any incident that the Contractor considers to constitute a violation of this clause. The notice should include the date, nature and circumstance of the conduct, the name, function and activity of each Government employee or Contractor official or employee involved or knowledgeable about such conduct, identify any documents or substance of any oral communication involved in the conduct, and the estimate in time by which the Government must respond to this notice to minimize cost, delay or disruption of performance.

(2) The Contracting Officer will promptly, within (to be negotiated and inserted into the basic contract at contract award) calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer will either:

(i) Confirm that the conduct is in violation and when necessary direct the mode of further performance,

(ii) Countermand any communication regarded as a violation,

(iii) Deny that the conduct constitutes a violation and when necessary direct the mode of further performance; or

(iv) In the event the notice is inadequate to make a decision, advise the Contractor what additional information is required, and establish the date by which it should be furnished by the Contractor and the date thereafter by which the Government will respond.

(End of Clause)

[64 FR 30444, June 8, 1999]

1552.239-103 Acquisition of Energy Star Compliant Microcomputers, Including Personal Computers, Monitors and Printers.

As prescribed in 1523.7003, insert the following clause:

ACQUISITION OF ENERGY STAR COMPLIANT MICROCOMPUTERS, INCLUDING PERSONAL COMPUTERS, MONITORS, AND PRINTERS (APR 1996)

(a) The Contractor shall provide computer products that meet EPA Energy Star requirements for energy efficiency. By acceptance of this contract, the Contractor certifies that all microcomputers, including personal computers, monitors, and printers to be provided under this contract meet EPA Energy Star requirements for energy efficiency.

(b) The Contractor shall ship all products with the standby feature activated or enabled.

(c) The Contractor shall provide models that have equivalent functionality to similar non-power managed models. This functionality should include as a minimum:

(1) The ability to run commercial off-the-shelf software both before and after recovery from a low power state, including retention of files opened (with no loss of data) before the power management feature was activated.

(2) If equipment will be used on a local area network (LAN), the contractor shall provide equipment that is fully compatible with network environments, e.g., personal computers resting in a low-power state should not be disconnected from the network.

(d) The contractor shall provide monitors that are capable of being powered down when connected to the accompanying personal computer.

(End of clause)

[61 FR 14507, Apr. 2, 1996]

1552.242-70 Indirect costs.

As prescribed in 1542.705-70, insert the following clause in all cost-reimbursement type contracts. If ceilings are not being established, enter "not applicable" in (c).

INDIRECT COSTS (APR 1984)

(a) In accordance with paragraph (d) of the "Allowable Cost and Payment" clause, the final indirect cost rates applicable to this contract shall be established between the Contractor and the appropriate Government representative (EPA, other Government agency, or auditor), as provided by FAR 42.703-1(a). EPA's procedures require a Contracting Officer determination of indirect cost rates for its contracts. In those cases where EPA is the cognizant agency (see FAR 42.705-1), the final rate proposal shall be submitted to the cognizant audit activity and to the following designated Contracting Officer: Environmental Protection Agency, Chief, Cost Policy and Rate Negotiation Branch

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(3804F), Cost Advisory and Financial Analysis Division, Washington, DC 20460.

Where EPA is not the cognizant agency, the final rate proposal shall be submitted to the above-cited address, to the cognizant audit agency, and to the designated Contracting Officer of the cognizant agency. Upon establishment of the final indirect cost rates, the Contractor shall submit an executed Certificate of Current Cost or Pricing Data (see FAR 15.406-2) applicable to the data furnished in connection with the final rates to the cognizant audit agency. The final rates shall be contained in a written understanding between the Contractor and the appropriate Government representative. Pursuant to the "Allowable Cost and Payment" clause, the allowable indirect costs under this contract shall be obtained by applying the final agreed upon rate(s) to the appropriate bases.

(b) Until final annual indirect cost rates are established for any period, the Government shall reimburse the contractor at billing rates established by the appropriate Government representative in accordance with FAR 42.704, subject to adjustment when the final rates are established. The established billing rates are currently as follows:

Cost center	Period	Rate	Base
.....
.....

These billing rates may be prospectively or retroactively revised by mutual agreement, at the request of either the Government or the Contractor, to prevent substantial overpayment or underpayment.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this clause, ceilings are hereby established on indirect costs reimbursable under this contract. The Government shall not be obligated to pay the Contractor any additional amount on account of indirect costs in excess of the ceiling rates listed below:

Cost center	Period	Rate	Base
.....
.....

(End of clause)

[49 FR 8867, Mar. 8, 1984, as amended at 59 FR 18977, Apr. 21, 1994; 64 FR 3876, Jan. 26, 1999]

1552.245-70 Decontamination of government property.

As prescribed in 1545.106(a) and 1545.303-71, insert the following contract clause when it is anticipated that a Contractor will use Government-furnished or Contractor-acquired property

in the cleanup of hazardous or toxic substances in the environment.

DECONTAMINATION OF GOVERNMENT PROPERTY (APR 1984)

In addition to the requirements of the "Government Property" clause, the Contractor shall certify in writing that any Government-furnished property or Contractor-acquired property is returned to the Government free from contamination by any hazardous or toxic substances.

(End of clause)

1552.245-71 Government-furnished data.

As prescribed in 1545.106(b), insert the following contract clause in any contract that the Government is to furnish the Contractor data. Identify in the clause the data to be provided.

GOVERNMENT-FURNISHED DATA (APR 1984)

(a) The Government shall deliver to the Contractor the Government-furnished data described in the contract. If the data, suitable for its intended use, is not delivered to the Contractor, the Contracting Officer shall equitably adjust affected provisions of this contract in accordance with the "Changes" clause when:

- (1) The Contractor submits a timely written request for an equitable adjustment; and
- (2) The facts warrant an equitable adjustment.

(b) Title to Government-furnished data shall remain in the Government.

(c) The Contractor shall use the Government-furnished data only in connection with this contract.

(d) The following data will be furnished to the Contractor on or about the time indicated:

(End of clause)

1552.245-72 Fabrication or acquisition of nonexpendable property.

As prescribed in 1545.106(c), insert the following contract clause in all cost-reimbursement type contracts or contracts with cost-reimbursement portions.

FABRICATION OR ACQUISITION OF NONEXPENDABLE PROPERTY (APR 1984)

The Contractor shall not fabricate nor acquire under this contract, either directly or indirectly through a subcontract, any item

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of nonexpendable property without written approval from the Contracting Officer.

(End of clause)

1552.246-70 Quality Assurance (QA) Program plan.

As prescribed in 1546.201(b), insert the following solicitation provision in Requests for Proposals if a program plan is required. A QA program plan is a general statement of an offeror's capability for QA.

**QUALITY ASSURANCE (QA) PROGRAM PLAN
(APR 1984)**

Each offeror, as a separate and identifiable part of its technical proposal, shall submit a Quality Assurance (QA) program plan setting forth the offeror's capability for quality assurance. The plan shall address the following:

- (a) A statement of policy concerning the organization's commitment to implement a Quality Control/Quality Assurance program to assure generation of measurement data of adequate quality to meet the requirements of the Statement of Work.
- (b) An organizational chart showing the position of a QA function or person within the organization. It is highly desirable that the QA function or person be independent of the functional groups which generate measurement data.
- (c) A delineation of the authority and responsibilities of the QA function or person and the related data quality responsibilities of other functional groups of the organization.
- (d) The type and degree of experience in developing and applying Quality Control/Quality Assurance procedures to the proposed sampling and measurement methods needed for performance of the Statement of Work.
- (e) The background and experience of the proposed personnel relevant to accomplish the QA specifications in the Statement of Work.
- (f) The offeror's general approach for accomplishing the QA specifications in the Statement of Work.

(End of provision)

1552.246-71 Quality Assurance (QA) Project Plan.

As prescribed in 1546.201(c)(1), insert the following solicitation provision in Requests for Proposals when a QA project plan is required as part of the proposal submission. A QA project plan is a specific delineation of an offeror's approach for accomplishing the QA specifications in a Statement of Work.

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When offerors are required to submit a project plan, a program plan may or may not be required. The project plan may be a part of an offeror's technical proposal, or a deliverable under the contract.

**QUALITY ASSURANCE (QA) PROJECT PLAN
(APR 1984)**

The offeror, as a separate and identifiable part of its technical proposal, shall submit a Quality Assurance (QA) project plan which shall describe specific procedures and responsibilities needed to accomplish the QA specifications in the Statement of Work. The project plan shall consist of the following form and content:

- (a) Title page, with provision for approval signatures.
- (b) Table of contents.
- (c) Project description.
- (d) Project organization(s) and responsibilities.
- (e) Quality Assurance objectives for measurement data, in terms of precision, accuracy, completeness, representativeness and comparability.
- (f) Sampling procedures.
- (g) Sample custody.
- (h) Calibration procedures, references, and frequency.
- (i) Analytical procedures.
- (j) Data reduction, validation, and reporting.
- (k) Internal quality control checks and frequency.
- (l) Quality assurance performance audits, system audits, and frequency.
- (m) Quality Assurance reports to management.
- (n) Preventive maintenance procedures and schedules.
- (o) Specific procedures to be used in routinely assessing data precision and accuracy, representativeness, comparability, and completeness of the specific measurement parameters involved.
- (p) Correction action.

(End of provision)

[49 FR 8867, Mar. 8, 1984; 49 FR 24735, June 15, 1984]

1552.246-72 Quality Assurance (QA) Project Plan documentation.

As prescribed in 1546.201(c)(2), insert the following clause in negotiated contracts when QA Project Plan Documentation is needed. A QA project plan is a specific delineation of an offeror's approach for accomplishing the QA specifications in a Statement of Work. When offerors are required to submit a

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project plan, a program plan may or may not be required. When a QA project plan was not a required part of the technical proposal, the project plan may be required as a deliverable under the contract by use of the following. However, the Statement of Work must contain a specification for the form and content of the project plan before this paragraph may be used.

QUALITY ASSURANCE (QA) PROJECT PLAN DOCUMENTATION (APR 1984)

(a) The Contractor shall submit to the Project Officer _____ copies of a Draft Project Plan for Quality Assurance within _____ days after the effective date of the contract.

(b) The Government will review and return the Draft Project Plan indicating approval or disapproval, and comments, if necessary, within _____ calendar days. In the event the government delays review and return of the Draft Project Plan beyond the period specified, the Contractor shall immediately notify the Contracting Officer in writing. The Contractor shall deliver the Final Project Plan within _____ days after the effective date of the contract.

(c) The Contracting Officer will incorporate the approved Quality Assurance Project Plan into the contract.

(End of clause)

PART 1553—FORMS

Sec.

1553.000 Scope of part.

Subpart 1553.2—Prescription of Forms

1553.209 Contractor qualifications.

1553.209-70 EPA Form 1900-26, Contracting Officer's Evaluation of Contractor Performance.

1553.209-71 EPA Form 1900-27, Project Officer's Evaluation of Contractor Performance.

1553.213 Small purchases and other simplified purchase procedures.

1553.213-70 EPA Form 1900-8, Procurement Request/Order.

1553.216 Types of contracts.

1553.216-70 EPA Form 1900-41A, CPAF Contract Summary of Significant Performance Observation.

1553.216-71 EPA Form 1900-41B, CPAF Contract Individual Performance Event.

1553.232 Contract financing.

1553.232-70 EPA Form 1900-3, Assignee's Release.

1553.232-71 EPA Form 1900-4, Assignee's Assignment of Refunds, Rebates, Credits and Other Amounts.

1553.232-72 EPA Form 1900-5, Contractor's Assignment of Refunds, Rebates, and Credits.

1553.232-73 EPA Form 1900-6, Contractor's Release.

1553.232-74 EPA Form 1900-10, Contractor's Cumulative Claim and Reconciliation.

1553.232-75 EPA Form 1900-68, notice of contract costs suspended and/or disallowed.

1553.232-76 [Reserved]

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8886, Mar. 8, 1984, unless otherwise noted.

EDITORIAL NOTE: Forms referenced in part 1553 do not appear in the Code of Federal Regulations.

1553.000 Scope of part.

This part prescribes Agency forms for use in acquisitions and contains requirements and information generally applicable to the forms.

Subpart 1553.2—Prescription of Forms

1553.209 Contractor qualifications.

1553.209-70 EPA Form 1900-26, Contracting Officer's Evaluation of Contractor Performance.

As prescribed in 1509.170-4(a), EPA Form 1900-26 shall be used by the Contracting Officer to record his/her evaluation of Contractor performance.

1553.209-71 EPA Form 1900-27, Project Officer's Evaluation of Contractor Performance.

As prescribed in 1509.170-4(a), EPA Form 1900-27 shall be used by the Project Officer to record his/her evaluation of Contractor performance.

1553.213 Small purchases and other simplified purchase procedures.

1553.213-70 EPA Form 1900-8, Procurement Request/Order.

As prescribed in 1513.505-2, EPA Form 1900-8 may be used in lieu of Optional Forms 347 and 348 for individual purchases.

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1553.216 Types of contracts.

1553.216-70 EPA Form 1900-41A, CPAF Contract Summary of Significant Performance Observation.

As prescribed in 1516.404-278, EPA Form 1900-41A shall be used to document significant performance observations under CPAF contracts.

1553.216-71 EPA Form 1900-41B, CPAF Contract Individual Performance Event.

As prescribed in 1516.404-278, EPA Form 1900-41B shall be used to document individual performance events under CPAF contracts.

1553.232 Contract financing.

1553.232-70 EPA Form 1900-3, Assignee's Release.

As prescribed in 1532.805-70(a), the EPA Form 1900-3 is required to be submitted by the assignee for cost-reimbursement contracts prior to final payment under the contract.

1553.232-71 EPA Form 1900-4, Assignee's Assignment of Refunds, Rebates, Credits and Other Amounts.

As prescribed in 1532.805-70(b), the EPA Form 1900-4 must accompany the assignee's release prior to final payment under cost-reimbursement contracts.

1553.232-72 EPA Form 1900-5, Contractor's Assignment of Refunds, Rebates, and Credits.

As prescribed in 1532.805-70(c), the EPA Form 1900-5 must be prepared by the Contractor prior to final payment under cost-reimbursement contracts and must accompany the Contractor's release.

1553.232-73 EPA Form 1900-6, Contractor's Release.

As prescribed in 1532.805-70(d), the EPA Form 1900-6 must be submitted by the Contractor under cost-reimbursement contracts prior to final payment thereunder.

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1553.232-74 EPA Form 1900-10, Contractor's Cumulative Claim and Reconciliation.

As prescribed in 1532.170(a), the EPA Form 1900-10 shall be used for an accounting of the cumulative charges and costs for cost-reimbursement contracts from the inception of the contract to completion. It shall be submitted by the Contractor along with the completion voucher.

1553.232-75 EPA Form 1900-68, notice of contract costs suspended and/or disallowed.

As prescribed in 1532.170(b), the Contracting Officer shall insert EPA Form 1900-68 in all cost-reimbursement type and fixed-rate type contracts.

[61 FR 29318, June 10, 1996]

1553.232-76 [Reserved]

APPENDIX I TO CHAPTER 15— ENVIRONMENTAL PROTECTION AGENCY; CLASS JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION IN ACQUISITIONS FROM THE FEDERAL PRISON INDUSTRIES AND THE GOVERNMENT PRINTING OFFICE

1. The Environmental Protection Agency (EPA) anticipates the acquisition of supplies from the Federal Prison Industries (UNICOR) and the acquisition of Government printing and related supplies from the Government Printing Office (GPO) to meet the needs of the Agency.

2. The Agency is authorized to make these acquisitions from the UNICOR and GPO without full and open competition under the authority in 41 U.S.C. 253(c)(5) as sources required by statute, i.e., 18 U.S.C. 4124 and 44 U.S.C. 501-504, 1121.

3. The anticipated cost of these acquisitions to the Agency will be fair and reasonable.

4. This class justification applies to any proposed acquisition made by the EPA from the UNICOR or GPO.

5. This class justification will remain in effect until April 1, 1988.

6. The undersigned certifies that this class justification is accurate and complete to the best of his knowledge and belief.

[50 FR 14361, Apr. 11, 1985]